Contents

* [Introduction 5](#_Toc374082862)

[Basic Principles 5](#_Toc374082863)

[Income Tax 5](#_Toc374082864)

[Statutory Interpretation 6](#_Toc374082865)

[Tax Avoidance 6](#_Toc374082866)

[Will-Kare v Canada Interpretation 7](#_Toc374082867)

[Gregory v Helvering – USA Case Tax Avoidance 8](#_Toc374082868)

[Duke of Westminster 8](#_Toc374082869)

* [Income/ Loss from Office/ Employment 8](#_Toc374082870)

[Introduction 8](#_Toc374082871)

[Characterization 9](#_Toc374082872)

[1. Whether you have an office / employment or independent contractor? 9](#_Toc374082873)

[Specific Anti-Avoidance Rule 9](#_Toc374082874)

[Inclusion 10](#_Toc374082875)

[Remuneration 10](#_Toc374082876)

[Payments on Termination 11](#_Toc374082877)

[General Benefits 11](#_Toc374082878)

[Scholarship, Fellowship, Bursaries 13](#_Toc374082879)

[Specific Benefits 13](#_Toc374082880)

[Allowances 16](#_Toc374082881)

[Exemptions 16](#_Toc374082882)

[Deduction 17](#_Toc374082883)

[Travel Expenses 17](#_Toc374082884)

[Meals 17](#_Toc374082885)

[Moving Expenses 18](#_Toc374082886)

[Characterization 19](#_Toc374082887)

[Weibe Door v MNR IC vs Employee test 19](#_Toc374082888)

[Engel 20](#_Toc374082889)

[Dynamic Industries Personal Service Business 20](#_Toc374082890)

[533702 Ont Ltd Personal Service Business 20](#_Toc374082891)

[Inclusion 21](#_Toc374082892)

[Goldman Gratuitous Pmt 21](#_Toc374082893)

[Fries Strike Pay 21](#_Toc374082894)

[Cirella Damages for Personal Injury = capital 21](#_Toc374082895)

[Curran Inducement pmt – irrelevant who paid 21](#_Toc374082896)

[Payments on Termination 22](#_Toc374082897)

[Mendes-Roux In respect of loss of employment 22](#_Toc374082898)

[Schwartz v Canada Loss of employment 22](#_Toc374082899)

[General Benefit 22](#_Toc374082900)

[Lowe Characterization of Benefit 22](#_Toc374082901)

[Huffman no material advantage 23](#_Toc374082902)

[Cutmore b4 lowe –even if required, taxable 23](#_Toc374082903)

[Deitch b4 lowe –even if required, taxable 23](#_Toc374082904)

[Savage Connection to Office 23](#_Toc374082905)

[Mindszenthy Gift – difficult to meet 23](#_Toc374082906)

[Detcheon 23](#_Toc374082907)

[Scholarship 23](#_Toc374082908)

[DiMaria 23](#_Toc374082909)

[Specific Benefits 24](#_Toc374082910)

[Thomas Eligible Housing Loss 24](#_Toc374082911)

[McArdle Debt Forgiveness 24](#_Toc374082912)

[Caanda v Hoefele /Krull Reversed by 80.4(1.1) 24](#_Toc374082913)

[Tsiapraillis Insurance Benefits 25](#_Toc374082914)

[Allowances 25](#_Toc374082915)

[Macdonald allowance 25](#_Toc374082916)

[Blackman Exception – travel allowance 25](#_Toc374082917)

[Exemptions 25](#_Toc374082918)

[Guilbert 25](#_Toc374082919)

[Deductions 25](#_Toc374082920)

[Travelling Expense 25](#_Toc374082921)

[Lucs 25](#_Toc374082922)

[Meals 26](#_Toc374082923)

[Healy ordinarily report to 26](#_Toc374082924)

[Moving Expense 26](#_Toc374082925)

[Storrow Pre-amendment – shorter list deduction allowed 26](#_Toc374082926)

[Giannakolpoulos Distance Requirement 26](#_Toc374082927)

[Dierckens purpose of move 26](#_Toc374082928)

[Rennie Ordinarily resides 26](#_Toc374082929)

[Ringham Ordinarily resides 26](#_Toc374082930)

* [Income/Loss from Business/ Property 27](#_Toc374082931)

[Characterization 27](#_Toc374082932)

[Definitions - *248(1)* 27](#_Toc374082933)

[Inclusions 28](#_Toc374082934)

[Gains from Illegal Activities 28](#_Toc374082935)

[Damages and Other Compensation 28](#_Toc374082936)

[Voluntary Payments 28](#_Toc374082937)

[Prizes and Awards 29](#_Toc374082938)

[Income from Property 29](#_Toc374082939)

[Deductions 30](#_Toc374082940)

[Illegal Expenses 31](#_Toc374082941)

[Damage Payments 31](#_Toc374082942)

[Fines and Penalties 31](#_Toc374082943)

[Legal Defence Costs 31](#_Toc374082944)

[Expenses with Personal Element 31](#_Toc374082945)

[Interest Expense 33](#_Toc374082946)

[Timings 34](#_Toc374082947)

[General Rules 34](#_Toc374082948)

[Inventory 35](#_Toc374082949)

[Running Expenses 36](#_Toc374082950)

[Prepaid Expenses 36](#_Toc374082951)

[Capital Expenditures 36](#_Toc374082952)

[Capital Cost Allowances 38](#_Toc374082953)

[Characterization 39](#_Toc374082954)

[Morden Business? 39](#_Toc374082955)

[Taylor Adventure of Trade 39](#_Toc374082956)

[Stewart 40](#_Toc374082957)

[Inclusions 40](#_Toc374082958)

[Gains from Illegal Act 40](#_Toc374082959)

[No 275 illegal act – taxable 40](#_Toc374082960)

[Damages 40](#_Toc374082961)

[Manley 40](#_Toc374082962)

[Voluntary Pmt 40](#_Toc374082963)

[Federal Farms 40](#_Toc374082964)

[Prize and Awards 40](#_Toc374082965)

[Abraham Lucky Draw – not taxable 40](#_Toc374082966)

[Rumack 40](#_Toc374082967)

[Savage 40](#_Toc374082968)

[Foulds Prescribed Prize 41](#_Toc374082969)

[Property from Income – Interest 41](#_Toc374082970)

[Perini Estate Int – can be retroactively calc 41](#_Toc374082971)

[Groulx Deemed Int 41](#_Toc374082972)

[Deduction 41](#_Toc374082973)

[Espie Printing illegal payments 41](#_Toc374082974)

[Imperial Oil Damage payments 41](#_Toc374082975)

[Rolland Paper Legal cost 41](#_Toc374082976)

[65302 BC 41](#_Toc374082977)

[Personal Expense 42](#_Toc374082978)

[Royal Trust recreation 42](#_Toc374082979)

[Stapley food n entertainment 42](#_Toc374082980)

[No 360 clothing expense 42](#_Toc374082981)

[Cippolone s 67 – reasonableness 42](#_Toc374082982)

[Locke 42](#_Toc374082983)

[Cumming Travel for business 42](#_Toc374082984)

[Bornfman Trust Int Expense 42](#_Toc374082985)

[Attaie reject indirect use 43](#_Toc374082986)

[Grenier ok to replace loan if still in business 43](#_Toc374082987)

[Mark Resources 43](#_Toc374082988)

[Ludco Ancillary purpose – ok 43](#_Toc374082989)

[Singleton Look at ancillary purpose 43](#_Toc374082990)

[Timing 43](#_Toc374082991)

[West Kootenay True Pic – method doesn’t have to be the same 43](#_Toc374082992)

[JL Guay Ltee timing it becomes payable 43](#_Toc374082993)

[Inventory 44](#_Toc374082994)

[Neonex inv cost – not deductible until sold 44](#_Toc374082995)

[Running Expense 44](#_Toc374082996)

[Oxford 44](#_Toc374082997)

[Capital Expense 44](#_Toc374082998)

[Johns-Manville 44](#_Toc374082999)

[Canada Steamship 44](#_Toc374083000)

[CCA 44](#_Toc374083001)

[Ben’s Ltd 44](#_Toc374083002)

* [Taxable Capital Gains and Allowable Capital Loss 45](#_Toc374083003)

[Computation 45](#_Toc374083004)

[Characterization 46](#_Toc374083005)

[Regal Heights inv/ capital property 46](#_Toc374083006)

[Burnett 46](#_Toc374083007)

* [Rules Relating to Computation of Income 47](#_Toc374083008)

[Allocation of Proceeds 47](#_Toc374083009)

[Non-Arm’s Length Transfers 47](#_Toc374083010)

[Attribution Rules 48](#_Toc374083011)

[Golden 48](#_Toc374083012)

[Lipson 48](#_Toc374083013)

# Introduction

## Basic Principles

* S 150(1) – return of income in prescribed form containing prescribed info file with minister, for each taxation year
  + Prescribed – regulations, minister – s 220
  + Each taxation year – s 249
* Look for definition
  + S 248(1) – **definition section**
  + if not 🡪 *Interpretation Act*
  + Look at case law
  + Dictionary
* **Function of tax**
  + 1. Allocation –
    - when mkt fails to allocate ex. public gd,
    - When mkt don’t price things right – tax is gd way to price in the cost
  + 2. Distribution – market distributes selectively – depend on demand n supply
    - Need system to moderate mkt
  + 3. Stabilization –
    - Can change tax – to moderate fluctuation in business cycle

## Income Tax

* **Sources of income**
  + **Main** –
    - Office + employment s 3(a)
    - Business + property
  + **Now –** include taxable capital gain s 38
* **Sets of issue**
  + **1. Characterization** – have you got one of these sources
  + **2**. **Inclusion –** what’s included
  + **3. Deductions –** what can be deducted
  + **4.** **Timing –** when do u include/ deduct
* **Requirement for income tax**
* 2(1) – income tax shall be paid – on taxable income fro each taxation yr of every person resident in ca at any time in the year
  + **Accounting period –** each taxation yr
    - 249(1) – individuals = calendar yr, company = fiscal year
  + **Tax unit –** every person includes individuals and persons 248(1)
  + **Rates –**progressive rates117(2)
  + **Tax base –** taxable income
    - 2(2)- **Income + additions – deductions** (permitted by Div C)
* **Income** – sth that flows over a period of time
  + Diff from capital – stock of wealth at one point
* **Computation of Income**
* S 3 – **income = (a) + (b) – (c) - loss, if negative = 0**
  + A – all income of the year including: office, employment, business and property)
    - Excludes capital gain
    - Sources- compute each source separately then aggregate to get total
      * Office and employment – labour
      * Business – active income
      * Property – passive income
      * Could have income from unspecified source
  + B - all capital gains + net gains – capital loss
  + C - deductions
  + D – business loss can be deducted against all kinds of income
  + E – special statutory deductions
  + F – no negative income 🡪 income = zero and loss gets carried over

## Statutory Interpretation

* **Traditional approach** (till 1984)**–** narrow and strict
  + Concern only with letter of the law
  + Presumption
    - Interpret in favour of taxpayer
      * Reason – legislature is powerful
* **Modern interpretation**
  + Driedger’s construction
    - Words read in entire context in grammatical and ordinary sense
    - Harmoniously w/ scheme, object of act n intention of parliament
    - Take into acct result of consequences of diff interpretation
      * If there’s one reasonable n fair vs one that’s not – prefer reasonable / fair one
* **Approach**
* 1. Start with the words –
  + Look at definition in the act, then dictionary
  + Principles
    - Associative word principle – interpret with other words in which its associated w/ in the sentence
    - Limited class principle - general term should be interpreted down a bit in association w/ other words
      * Interpret to mean “others” within the same class
* 2. Purpose and intention
* Scheme of the act
  + Mediates the broad purpose and how its put into action
  + Principles
    - Presumption against totalogy – if parliament used diff word for something then probably meant diff things
    - Presumption of consistent expression
      * if used same verbal formula in diff place- meant same things
    - principle if implied exclusion
      * imputes meaning to the absence of the word
* Object of the act – ma refer to extrinsic doc, infer from legislation, academics
* Intent of parliament
  + Can look at external sources – such as statements by minister
  + presumptions
    - no retroactive legislation
      * Need to be explicit if want to be retroactive
    - Don’t overwrite private law rights
    - Doesn’t violate Charter / international law
    - Doesn’t extend law in extraterritorial fashion
  + Consider consequences
* MacInnes *–* **looked at**
  + Purpose and intention
  + Context
  + Intent
* **Now –** textual, contextual and purposive approach
  + specific rule governs over general rule Schwartz

## Tax Avoidance

* **2 approaches**
* 1. Strict Construction and legal formation – CA n UK
  + Legal substance over form doctrine Duke of Westminster
    - Look at the legal relationship actually est
      * Look at what it is in the law – not what the party calls it
    - Rejected US approach of business purpose – reason- too discretionar
  + Sham and ineffective transaction doctrine Duke of Westminster
  + Specific anti-avoidance rules – SAARs
* 2. Economic substance USA
  + economic substance over form helvering
* **GAAR** s 245
* **Element**
  + 1. Tax benefit – has to be some tax benefit
    - Broadly defined – include deduction, credits, etc
  + 2. Tax purpose – apply to tax motivating transaction
    - Engaged in to primarily avoid tax
  + 3. Abuse concept
* **Approach** – provision of last resort
  + 1. Determine whether there’s an avoidance transaction
    - Test – comparative and objective
    - 245(3) – will receive some tax benefit – but for this section
      * Unless – **objectively reasonable**
        + Arranged for bona fide purpose rather than tax purpose
    - Tax benefit – factual determination so deference to judge
      * **Comparative –** compare what you would have done but for the tax purpose
        + Low threshold – any deduction is tax benefit
  + 2. Tax purpose- factual determination
    - Test – comparative and objective
  + 3. Abuse s 245(4)
    - Applies to transaction **only if reasonably considered** 
      * A – would result in misuse OR
      * B – would result in abuse

##### Will-Kare v Canada Interpretation

F

* tax incentives for
  + Accelerate capital allowance and investment in certain property
* Tp – paved sidewalks, used to purchase from competitor but now construct own plant
  + During the year sold ¼ to others, argue when paved sidewalks also sold ashes to clients
* Govt – disallowed incentive cuz its not “used primarily for sale” its used for own business
  + Ashes – passed by accession n note sale

I Interpretation of “use primarily for sale”

A

* **Majority –**
* Look at legal definition of sale – decide it should apply
  + Reason – assume that there’s consistency across law of CA
    - Meant the legal meaning – would use it in another way if had other intention
* **Dissent -**  prof agrees w/ this
  + Approach – ppl should be able to understand the law 🡪 plain meaning approach
    - If it’s clear legal term –Ok
    - If not clearly a legal term – consider other factors
      * Look at consequence
        + Absurd to disallow incentives
      * Intention of parliament – look at ministers statement n debates
        + Main purpose – encourage manufacturing

##### Gregory v Helvering – USA Case Tax Avoidance

F

* Tp want to sell shares without having been double taxed on the capital gain n dividends
  + Incorporated another company – which bought the shares n dissolved it
    - Reason – if reorganization 🡪 no gain realized🡪 not taxable
* Rev Auth-
  + 1. No economic value/ substance in transaction that she did
  + 2. Sham

A

* Within statute?
  + No – what they did was not pursuant to reorganization
    - Form of reorg – but no substance
* Business purpose test – interpretive overlay of all provision
  + If transaction is absent business purpose🡪 suspicious
* Sham doctrine
  + If do sth that looks like some legal transaction bt econ effect is sth else
    - May be called the sth else
* Economic substance > form approach

##### Duke of Westminster

F

* Signed deed of covenant with Gardener
  + Claim – its not salary / wage- but still same amt for same service –

A

* **What is the k** 
  + Commissioner – still employment K since same amt n in Duke’s service 🡪 no deductible
  + Tp – not employment k
  + Court – disagreement
    - Look at the rights establish – not a collateral agreement
* **Economic substance of reality**
* Commission – argue substance over form
  + Even if not employment k – substance is an employment k
* Court – Cannot have substance over form doctrine
  + Reason – discretionary 🡪 court will be replacing the law
    - Tp – right to plan way around tax as long as w/in law
  + **Doctrine**
    - Legal Substance over form – in Ca
      * Look at the legal relationship actually est
        + Look at what it is in the law – not what the party calls it
    - Sham -
      * Ca- focus on what the actually legal relationship
      * US - focus on economic substance doctrine
    - Ineffective transaction doctrine
      * Try to est legal relationship – but don’t get it right

# Income/ Loss from Office/ Employment

## Introduction

* 3(a) – source of income
* 5 –basic rule –
  + Income from office/ emp –includes salary, wages n other remuneration including gratuities
* **Business vs employment** 
  + Business adv – more deduction
    - Low rate
    - Income splitting possible

## Characterization

### 1. Whether you have an office / employment or independent contractor?

* **Characteristics of the relationship -** s 248(1)
  + Officer – position is there ready for person to fill it
  + Employee – position of an individual
* **Test for Independent C / Employee** Weibe Door
* **1. Control -** 
  + K of service – employee
    - Master and servant – master has right to tell them what and how work is done
  + K for service – IC
    - Principal n agent – has right to tell agent what to do only
* **2. Ownership of tools –** include principal work place
  + IC – own tools for own use
    - If work from home – more likely to be IC
  + Employee – tools provided by employer
* **3. Chance of Profit / Risk of Loss –** compensation for work
  + - Degree of financial risk taken
    - Degree of responsibility for investment and management
  + IC - Chance of profit – if do better / worse get more or less
  + Employee – only get paid salary
* **4. Integration test –** 
  + Work is integral to business?
    - Employee – work is integral to business
    - IC – work is accessory to work
  + Approach
    - From perspective of **employee not employer**
      * reason
        + when viewed from employer – won’t hire anyone unless need them
    - look at whether its **exclusive relationship?**
      * If work for one person – likely employee
      * If work for diff ppl – more likely IC
* **5. Other factors** 
  + Whether business is already established –
  + Specific result
  + Intention of the party Royal Winnipeg Ballet
    - Agreement is not determinative of the relationship – irrelevant what they call it
      * Must determine the legal substance over the form –
    - Reason – may not have equal bargaining power
* **Approach** 
  + Total relationship test
    - Who’s business is it?
    - Contextual and programmatic
    - Look at all the tests

### Specific Anti-Avoidance Rule

* 125(7) – **personal service business**
  + Requirement
    - A - Individual – provides service thru corporation to a would be employer
      * **But for the company** – would have employee status
      * “incorporated employee”
    - B – any person related to “incorp emp” – is specified SH
      * owns at least 10% of shares of the corp of the service company
      * Related person – connected by blood relationship, marriage/ adoption
  + Exception
    - C – employs more than 5 full-time employees thruout the yr Or
    - D – service are provided to associated corp
  + Implication 18(1)(p)
    - Limits the expenses that can be claimed – as oppose to actual business
    - Deduction allowed
      * Cost of wages and salaries paid
      * Other employment provided
    - denied – low corporation tax rate
* **Approach** Dynamic Industries
  + **1. Within the requirement?**
    - Working thru corp to a would be employer?
    - Individual / related person owns the share?
  + **2. but for the corp, would be employee? Look at the business from before and after**
    - Apply the Weibe Door test- employee?
      * Ownership of tool
      * chance of profit n risk of loss
        + If assumed lots risk – regular business
      * Integration
        + If worked for other people – regular business
        + If only work for one business –PSB 533702
      * Control
        + If no independence- personal service business 533702
    - May consider business purpose test –
      * 533702 – no business purpose –so its PSB

## Inclusion

### Remuneration

* 5(1)-**includes : salaries, wages, gratuities, other remuneration** 
  + Received by tp – means get the cash
* 5(2) – loss can be deducted
* 6(3) – **deemed an amount to be** **remuneration**
  + Anti-avoidance rule –
  + Purpose – broaden scope of inclusion to capture things that wouldn’t be in remuneration
  + Requirement
    - Either:
      * A – pmt for employee during employment OR
      * B – from obligation arising out of agreement b4/during/immediately after payee was employed by payer period
        + collateral to employment
        + On acct, in lieu of pmt or in satisfaction of obligation arising out of agreement
        + Arise out of agreement – close to time of employment

But its not employment K

* + - And – one of C/D/E – **economic substance-** 
      * + regardless of form/ effect, reasonable to assume its econ substance is
      * C – inducement
        + consideration for accepting employment
      * D –remuneration - payment for services
        + if look at the pmt – regardless of form/ effect – reasonable to assume
      * E – covenant
        + with reference to what the employee is or is not to do b4 / after termination of employment
* **Gratuitous Payment**
  + **Consider remuneration if:** Goldman
    - Connection with service
      * Does not need direct connection
      * If viewed from receiver – it’s a payment for service
    - Legal obligation
      * Even if doesn’t exist – can still be for services/ remuneration
* **Strike Pay**
  + **Def’n** – payment from union for withdrawing your services to employment
    - Union – build up strike funds to enable employee to participate in strike
      * 8(1)(i)(iv) - Union dues – deductible
      * 149(1)(k) - Union – aren’t taxed on income they earn🡪 strike fund is not taxable
  + **Taxable if: During strike –**
    - Received when employed by union during strike Loeb
    - Originated from business by union during strike Ferris
  + **Non-taxable**
    - If only strike pay
* **Damages for Personal Injury**
  + **Not taxable –** since loss of earning capacity is of capital nature Cirella
  + Surrogatum principle **–** doesn’t apply to employment contextCirella
* **Inducement payment**  6(3)(c)
  + As long as essence of payment – is for service
    - Irrelevant whether paid directly by employer or other person Curran

### Payments on Termination

* **Employment K**
  + When terminated / ceased
    - If getting paid from discontinuation – taxable
    - Payment for terminating employment K b4 employment begins – Schwartz
      * Not retiring allowance / income from employment
    - Lump sum pmt for loss of employment Schwartz
      * That’s for “ embarrassment, anxiety and inconvenience”
        + Allocation – unclear
        + Whole lump sum not taxable as income
* **Retiring allowance -** 56(1)(a)(ii)
  + Requirement – defined in 248(1) –
    - 1. In respect of loss of employment
      * In respect of – broadest possible scope Mendes-Roux
        + Encompasses any pmt connected with tp’s loss of employment
    - 2. Must have loss of office/ employment
      * If not yet under obligation to provide personal service Schwartz
        + Pmt – is not retiring allowance
      * Statutory language – excludes intended employment Schwartz

### General Benefits

* 6(1)(a) – **value of benefits** include in income
  + Include: value of board, lodging and other benefits
  + Received/ enjoyed by:
    - Tp
    - Person who doesn’t deal at arm’s length w/ tp
  + **Purpose of provision**
    - Prevent ppl to avoid tax by paying non-cash incentives
* **Characterization**
* **1. Characterization of benefit**
  + Limited class principle – “and others” refer to things that are similar to the ones mentioned
  + Requirement
  + **1. Benefit – material advantage conferred measurable in $$ terms** Lowe
    - Not focused on mental / psychic benefit
    - If not making them better off – only restoring to original econ situation – not benefit Huffman
  + **2. if business related 🡪 not taxable**
    - When personal benefit is incidental 🡪 irrelevant
      * If personal benefit is beyond incidental 🡪 taxable
    - Legal expenses – if it’s a consequence of their job – not taxable Pellizzari, Clemiss
      * If unrelated to part of job – legal expense consider personal expense – taxable
    - Even if required by employer - may still be considered taxable Cutmore, Deitch
      * As long as there’s economic advantage
      * Issue­ - decided b4 Lowe, may argue its required like in Lowe so not taxable
      * After Lowe- even if it’s out of necessity – may be taxed McGoldirck
        + McG – provided meals working at a remote casino

Impossible to go off site to eat

* + - * + Tax rate – depend on how many times u take adv of the benefit

If only take adv ½ of the time – tax on ½

* + CRA Administrative exemption- if doesn’t amt to extra remuneration
    - 1. Employer-provided parties/ social events
      * Dunlap – obtain benefit even tho unilaterally conferred – taxable
      * CRA response – not taxable
        + If – generally available to all employees

Cost does not > $100/person

* + - 2. Discounts on merchandise n commission on sale
      * Doesn’t include – if extraordinary arraignment – where purchased at less than employer’s cost
    - 3. Transportation to job
    - 4. Recreational facilities
      * Include – free to use the facilities and
        + Pmt to become member of social/ athletic club

If personal benefit is incidental – not taxable Rachfalowski

Not golfer, only went to enhance company’s image

* + - 5, transportation passes
      * Airline passes- taxable if travels on space-confirmed basis, paying < 50% of fare available
      * Bus n rail companies – no tax
      * Retired emp of transportation companies – no tax
    - 6. Frequent flyer program
      * If not convert to cash
      * Not used as alternative form of remuneration / tax avoidance
* **2. Connection to office/ employment**
  + “in virtue of , connected to , in respect of”
  + Test- Whether was conferred on tp as an employee / simply as a person Savage
    - In respect of – widest scope
      * Look at whether the subject matter is related to the employment
  + Can be gift from employer – high threshold Mindszenthy
    - Require fairly cogent evidence
      * Intention of donor – important factor
        + If deduct as expense 🡪 not gift
  + Even if not paid directly by employer – can still be consider benefit connected to office Waffle
    - Waffle – received free holiday from Ford directly but employed at ford dealership
  + Even if required condition unrelated to employment to be – can still be emp benefit Giffen
    - Giffen – frequent flyer pt – receive benefit cuz fly a lot for employment + member of frequent flyer
    - NOTE – CRA – no emp benefit from frequent flyer pt
* **3. Value –** how benefit should be valued in monetary terms
  + General rule - Fair market value Schroter
    - Reason – need to be fair to other tp who have not received the benefit
      * Objective assessment
  + Other rules
    - Cost of providing benefit –
      * (Caribbean vacation) Waffle
      * Caretaker – required to be on-call so require to stay in caretakers’ suite Jelles
        + Not FMV of the rent – but the value of benefit received
    - May discount the fair market value
      * Ring had corporate logo- impact on fair mkt value Wisla
    - Presumed annual rate of return on the cost
      * When difficult to value – yacht that’s available anytime Taylor
        + Doesn’t not consider rental –cuz available all the time
        + Not whole value – cuz don’t own it

### Scholarship, Fellowship, Bursaries

* 56(1)(n) – **scholarships, bursaries**
  + **If received in respect of business/ employment – taxable as employment income** 
    - benefits includes 6(1)(a)
      * received / enjoyed by person who does not deal at arm’s length –
      * 6(1)(vi)
        + Program by tp’s employer – designed to assist individual to further their education

If tp – deals w/ employer at arm’s length

Reasonable to conclude – not substitute for salary/wage/remuneration

* + - * if scholarship paid to children – may still be considered benefit
        + amendment to 6(1)(a) – reversed DiMaria
* 56(3) – **exemption**
  + A – scholarship, fellowship/ bursary in connection w/ enrollment in
    - I – educational prog
    - Ii- elementary/ secondary prog
  + B – scholarship – for literary, dramatic, / artistic work
  + C – prize- taxable if > $500
* 56(3.1)- exemption only applies to ppl pursuing degree
  + A – intend to support tp’s enrollment in program 🡪 leads to degree
  + B – limit exemption for part-time student
    - Only educational cost

### Specific Benefits

* **Relocation Assistance**
* 6(23) –deemed employer-provided housing subsidies – as benefit included
  + Requirement
    - In respect of employment
    - Received benefit- cost of, financing of, use of or right to use a residence
  + Taxable if employer gave lump sum to cover higher living expense cost Phillips
  + Exception
    - Moving expense – not taxable benefit Pollesel
      * Reason – can either be deducted from tax/ benefit is not taxable
        + Occasioned by work relationship n compensates u for additional cost
    - Reimburse employee for expense in moving employee n family n household effect
      * Either cuz:
        + Emp transferred or
        + Having accepted employment at a place other than where former home was located
      * Not taxable
    - If employer pays for expense of moving employee n family n household effect out of remote place at termination of employment
      * No benefit
    - If move employee back home – not taxable MacInnes
      * Military covered cost for tp to move to original home
      * Not taxable – no economic gain/ adv/ benefit
* **Compensation on Housing loss**
* **1. Housing loss –** full amt taxable
  + 6(19) – amt paid in respect of housing loss in respect of employment – deemed taxable benefit
    - Test – in respect of
    - Exclude – eligible housing loss
  + 6(21) – amt of housing gloss
    - Greater of (a) or (b) > c or d
    - = cost base/ highest fair mkt value > proceed / fair market value of disposition
      * A – adjusted cost base of residence
      * B – highest fair mkt value – w/in 6 mth period
      * C – if house disposed of
        + Lesser of:

I – proceed o disposition and

Ii – fair market value

* + - * D – other case- fair market value
* **2. Eligible Housing loss**
  + 6(20) – eligible housing loss – amt
    - 1st $15k – free
    - A - If exceed , tax ½ of the amt above 15k
      * If get them in diff years – will be subtracted so 15k exemption will be used up
      * =1/2 (compensation – 15k)
    - exceeds
    - B – total of all amt which is included for preceding taxation yr
      * = ½ (previous yr amt + this yr – 15k) – amt deducted last yr
      * Ex. 2012 – give 30k, 2013 – give 10k
        + 2012 = ½ (30k-15k) = 7500
        + 2013=1/2(30k+10k – 15k) – 7400 = 5000
  + 6(22) – definition
    - Eligible housing loss – eligible relocation
      * Eligible relocation:
        + Move to new work location – to work/ business
        + Move 40km closer to this new work location
      * Can only be for one residence
  + **Test –**
  + 1**.** Has relocation enable him to carry on employment / business in Ca? Thomas
    - Not eligible relocation – if no established employment at new location Thomas
    - Can argue – provision only said did it enable you to carry on
      * Did not say w/in how long need to find employment / work for same employment
  + 2. moved 40km closer to new work location
* **Forgiveness of Debt**
  + 6(15) –
    - A- deemed benefit – if debt extinguished/ forgiven
    - B – value – amt forgiven
  + 6(15.1) –forgiven amt
    - Lesser of –
      * Amt outstanding OR principal amount
    - Minus – amt you already paid
  + **Test –** 6(1)(a)
    - Nexus test- in respect of employment
      * Even if forgiven on termination – can be considered taxable McArdle
        + If forgiving the loan was integral part of arrangement which ended employment
* **Low Interest/ Interest Free Loan**
* 6(9) – if deemed by 80.4(1)- to be benefit – need to include in income
* 80.4(1) – deemed to be benefit if received loan
  + Requirement
    - Because of / as consequence of:
      * Narrower than in respect of Hoefele
    - Previous, current or intended office/ employment
  + Calculation
    - (a+ b ) – (c+d)
    - A – prescribed rate \* amt
      * Prescribed rate = avg quarterly yield of Govt of Ca treasury bills
    - B – int paid /payable by employer
    - C – int paid by employee
    - D – reimbursed employer for the amt they pay
  + Implication
    - If interest rate u borrowed increase – taxable amt decreases
    - If borrow more money – amt decreases
      * Encourages you to borrow more money
* 80.4(1.1) –reversed Hoefele
  + Loan deemed to be received / incurred if
    - Reasonable to conclude –
      * But for the previous/current/intended office either
        + A – terms of loan / debt would be diff OR
        + B - would not have received the loan/ incurred the debt
* **Home relocation loans –** 
  + 80.4(4), (6) – int on loans for home purchase/ relocation
    - Rate of interested determined under 80.4(1)(a)
      * May NOT go above prescribe rate of int – at beginning of 5 yr period
  + 110(1)(j) – eligible for deduction in respect of **home relocation loan** 
    - Lesser of
      * I – 80.4(1) deems benefit in respect of at least one loan that is not a home relocation loan
        + Benefit – would have been deemed if 80.4(1) only applied to home relocation loan
      * Ii – amt of int for yr – computed under 80.4(1)(a)
        + If home relo loan – had principal balance of 25k
        + And loan was issued – more than 5 yrs ago, / extinguished after 5 yrs
        + \*\*exam- computation = prescribed rate at beginning of initial yr \*25K
      * Iii – total benefit deemed under 80.4(1)
    - Provides
      * In computing taxable income
        + Deemed int benefit – of first 25k of home relocation loan

- nil up to 1st 5 yrs of loan

* **Insurance benefits**
* 6(1)(a)(i) – employer’s **contribution to** wage loss program – not taxable benefit
* 6(1)(f) – benefits received for the wage loss program is included in income if
  + Requirement
  + **Amt payable** on periodic basis
    - Payable – as long as had legal obligation to pay Tsiaprallis
      * Even if paid in lump sum – still ok
      * Only the part – that’s related to accumulated arrears
        + Not – future pmt = of capital nature
  + **Pursuant to** wage loss replacement plan
    - Pursuant to – consider surrogatum principle
      * Can be indirectly pay for the plan Tsiaprallis
  + tp’s employer had **made a contribution**

### Allowances

* 6(1)(b) – **allowances received for personal / living expense** / other purpose included –
  + Lots exceptions
  + **Requirement** Macdonald
    - 1. Arbitrary amount
    - 2. Paid for specific purpose
      * Even if not used for improper purpose n reasonable estimation North Waterloo
        + Can still be consider taxable allowance –
        + Reason – treated as additional remuneration – not as reimbursement
    - 3. At discretion of recipient
  + Diff from
    - Reimbursement – not an arbitrary amt n no discretionary use
      * Reason – need receipt
    - Advance – give certain amt of money but need to acct for it
      * Ex. give change bak / acct for expenditure
* **Exceptions**
* 6(1)(b)(vii) **–** exclusion for reasonable allowance for travel
  + Requirement
    - In performance of duty
      * Need to look at:
        + Length of time Blackman

Sojourning – away temp for lengthy period of time

not travelling – so taxable on allowance

travel – going around for short time

* + - * + place stayed at
    - Away from metropolitan area / municipality where emp ordinarily worked/ reported
    - Non-motor vehicle expense
  + 6(1)(b)(vii.1) – motor vehicle exception
    - Requirement
      * Reasonable allowance for travelling in performance of duty
    - 6(1)(b)(x) – if not based solely on km driven for work
      * Not reasonable allowance

### **Exemptions**

* 81(3.1) – Reasonable allowance – as paid travel allowance
  + requirement
    - part-time work
    - More than 80km
    - Require u to work away from where u normally work
* 6(6)(a)(i) – special work site – allowance for lodging /boarding/transportation exempt
  + Requirement
  + I – temporary nature
  + Maintained residence elsewhere
    - A – available for tp – not rented out by tp to others
    - B – too far to commute
      * CRA - around 80km
      * Court – would also consider – type of work, hours of work, difficulty of commute
        + Assess reasonable commute in light of tp’s work
  + Ii – location – too remote so cannot reasonably be expected to est n maintain residence
    - Only need to be an unusual work place for employee Jaffar
      * Ie – assigned to another premise temporarily
        + Does not need to be remote – as in “northern bush”
  + Require to be away for no less than 36 hrs

## Deduction

* S 8 – contains specific and detailed deduction
  + Cannot deduct – if not listed

### Travel Expenses

* 8(1)(h) – **travel expense deductible – exclude motor vehicle**
  + Requirement
  + In course of office/ employment
    - Narrower test – “in course of” Luks
    - Can deduct if:
      * If travel to diff places – can deduct ones that are not ordinarily report to
        + Chrapko – teller for jockey club – required to travelled to 2 location in Toronto and 1 in Fort Erie - only FE one deductible
      * Expense travelling from home to other location that’s not ordinarily report to
        + Merten – Chrapko qualified the word by recog tp can deduct travel expense from home to place of work

As long as work – is not place usually worked

* + - * General approach – if required to have all documents while attending each diff place – need car 🡪 deductible
        + Evans – school psychologist who needs to carry all paperwork n require to travel to diff school everyday
    - Cannot deduct
      * Not part of employment – ie carrying own tools Luks
  + I - Ordinarily required to carry duty away from employer’s place of business
    - Place of business – where you ordinarily report to Nelson
      * Not head office of business
  + Ii - Required under K of employment – to pay for travel
    - Can be implied
  + Iii- Did not receive tax-free allowance
* 8(1)(h.1) – **motor vehicle travel expense**
  + Requirement
    - In course of office/ employment
      * Narrower test – “in course of”
    - I - Ordinarily required to carry duty away from tp’s place
    - Ii - Required under K of employment – to pay for travel
      * Can be implied
    - Iii- Did not receive tax-free allowance
* 8(10) – in order to deduct – need prescribed form signed by employer
  + Stating employee is required to travel for job and not reimbursed

### Meals

* 8(4) – meal allowance
  + Requirement
  + Required to be away
    - From municipality/ metropolitan area where tp ordinarily report for work
      * Approach Healy
        + 1. Find the municipality where emp usually reports for work
        + 2. Find whether was away from that for more than 12 hours
      * even if worked at diff locations – can still be deducted
        + reason - section is to enable emp to deduct out of pocket exp when away from place of work
  + Not less than 12 hours
* Subject to 67.1(1) –
  + Expense for food – deemed to be 50% of lesser of
    - A – amt act paid/ payable and
    - B – amt that is reasonable in circumstances

### Moving Expenses

* S 62 – **moving expenses deductible if**
* **1. eligible moving expense** 
  + 62(3) – definition includes
  + A- travel cost- “reasonable amt “
    - in course of moving tp n member of household from old to new
    - dogs are member of household Critchley
      * can deduct cost for shots , tranquilizers paid as part of move
    - excludes expense for house and job hunting travel Ball
  + b – cost to transport/ store household effects
  + c – meals/lodging for 15days – no restriction of reasonable amt
    - near old/ new residence – for tp n family members
  + d – cost to cancel the lease –
  + e – tp’s selling cost in respect of sale of old residence
    - Pollard - higher int rate paid instead of penalty – can be deductible
      * To discharge mortgage – paid higher tae of int on new mortgage🡪 deduct additional int paid on new mortgage
    - Collin- if direct n immediate object was to sell house – can deduct
      * Paid lump sum to trust as inducement to sell house
  + f – cost of legal service wrt of purchase of new residence, tax and fees
    - if sold old residence
      * if renting old residence- cannot deduct
  + g – int, property tax, ins premiums, cost of heating n utilities of old residence – up to $5000
    - I – old residence has to be empty
    - Ii – reasonable effort made to sell
    - Situation – can’t sell old residence, can deduct carrying cost
  + H – cost of revising legal doc to reflect new address n connecting/ disconnecting utilities
* **2. eligible relocation** – s 248(1)
  + 1. Distance Requirement – 40km closer to new work location
    - test = shortest normal route used by public Giannakolpoulos
      * Need to incorporate some rationality n realistic approach Nagy
        + If route was too convoluted – even tho shortest distance

May not be correct measurement

* + - * + Consider – shortest route +normal route to travelling public
        + F- shortest route Cra calc - require to take tons of turns n travel in heavily congested areas – not realistic
    - Exclude
      * Even if occasionally inconvenient – still consider shortest normal route Higgins
        + Shortest – travelled by ferry, even tho long line up n occasionally freeze so no ferry – still not deductible
      * Consideration of time Lund
        + If both were considered normal –

Proper measure was the shorter

Even if one took way longer then other

* + 2. Purpose of the Move-
    - A – enable tp to carry on business/ to be employed at a location
      * **“**enable” - interpreted more broadly Abrahamsen
        + don’t need to be already employed at the new location b4 move
        + no time requirement required by act –

can be employed for a while then moved closer Dierkens

* + - * new work location- conflicting case law
        + disallow- only if there’s new work location

Grill – moved cuz divorced but no change at job

Moreland **–** assigned new employment duties but same location

Howlett –promoted so need to spend more time at work

* + - * + Allowed – even if no new work location

Gelinas – went from pt🡪 full-time so moved closer

“sth must change at work”, only need to be a location in Canada – no requirement of new work location

Dierkens – no new work location

* + - * + prof – doesn’t need new work location, just enable u to carry on work

gelinas approach – cuz look to words of statute

* + 3. Where ordinarily resided
    - Can only ordinarily reside at one place – even if reside in diff places Rennie
    - Conflicting case law
    - Ordinarily 🡪 Way station🡪 new – ok to deduct Ringham
      * Temp domestic arrangements - can still be regard as way stn Neville
        + ie renting in btw – as long as subjective intention to return
        + if no intention to return – renting may be ordinarily residence Calvano

rented house

16mth later to sold old hse – cuz tenant insisted longer lease

not deductible – rental =ordinarily residence

* + - * could be a period where there’s no ordinary residence Pitchford
        + Pitchford – Vic🡪 Mj🡪Saskatoon

MJ – not ordinarily residence cuz most stuff remained in storage, did not take a residence ordinarily resided

* + - Ok to deduct cost of selling former residence – even if sold yrs later Jaggers
      * After acquired new residence – should not be unduly narrow by the technical approach
    - Temporary work
      * Cannot deduct if worked at diff location only temp Turnbull
        + Worked at various locations temp but retained a home n returned to it each yr –turnball
        + Macdonald – not deductible cuz didn’t take belongings, didn’t change address, wife stayed at original location
      * Can deduct if accepted temporary K
        + Cavalier – even if wife stayed behind n no changes in address
* **3. Limitation doesn’t apply** to the extent of
  + Limit on deductible – up to income earned that the relocation enabled tp to carry on
  + A – paid on tp’s behalf – cuz of office/ employment
    - Pollesel – if reimbursed / paid by employer for moving expense
      * Non-taxable benefit – so not deductible
  + B – next yr can deduct the remaining – unlimited carry over
  + C – amt does not exceed
    - I – total of new income at new work location / carrying on business at new location
      * Reason – expense is to earn income at new location where moved to
  + D – can deduct if included reimbursement n allowances received in income

###### Characterization

##### Weibe Door v MNR IC vs Employee test

F

* Weibe door – had specific understanding with door installer that they are independent contractor
  + So responsible for own tax
* Issue – EI and pension plans –
  + If employee – need to withhold EI n pension plan

A

* Case at bar
  + 1. Control – indecisive
  + 2.tools - IC – owns the tools, W only provides special rack
  + 3. Chance of profit – IC
    - If do jobs well n fast🡪 more money, if bad job have to pay for warranty work
  + 4. Employee – TC erred, need to look from employee’s pov

##### Engel

F

* Tp - business reporter was with global, incorporated Reason corporation
  + Enter into exclusive K with Reason which enter into K with Global
    - Overlap btw 2 K but resigned from Global

Hypothetical – if GAAR applies

* 1 tax benefit – yes
* 2. Primary tax motivation - difficult to determine
  + Tp’s purpose – want more flexibility in employment, tax was part of consideration
  + Court –
    - There is a K btw reasoned n K – so not substance over form

##### Dynamic Industries Personal Service Business

F

* DI- heave construction company
  + Share – originally owned by husband than transferred all to spouse
  + Result – husband now employee of company
* Events
  + Do works for diff companies
  + 95-99 – only worked with one company SILL
    - Reason – big K, required lots of work
      * Responsible for managing SILL’s K with Fording
    - Compensation – cost plus basis
      * Paid for living out allowance, over time
      * DI - has to fix error at its own cost
        + No compensation for – overhead cost
        + No security from SILL – had to arrange for own financing
* Rev – reassessed argue its income
  + Reason – 18(1)(p) – personal service business

Analysis

* **Reasonable to be regarded as employee of SILL but for corp of Dynamic?**
  + For – exclusivity of work
  + Court – No
    - Approach – look at business from b4 and after the period of assessment
    - Assumed a lot of work
    - Had been working with a lot of ppl
      * Only w/in that period – so much work so consumed all his time

##### 533702 Ont Ltd Personal Service Business

F

* Company – BPH –plumbing and heating supply, shares owned by husband
  + Wife – set up corporation n worked for BPH
* Court – Personal service business
  + Reason –
    - showroom had no business purpose
    - Worked for nobody else but BPH
    - No commercial independence
* Contract to Dynamic

#### Inclusion

##### Goldman Gratuitous Pmt

F

* Tp – shareholder of a company in receivership
  + Involved in plan of reorganization
  + Remuneration for work –
    - Informed – no remuneration but legal fees would be sufficient so can get sth
  + Counsel received legal fees – paid 14K to Goldman in 2 yrs
* Tp argue – gift from lawyer
* Govt – income is taxable

A

* **Taxable remuneration**
* Reason
  + Money received for and in connection to his services
    - Connection – doesn’t have to be direct
  + Legal obligation - even if doesn’t exist doesn’t mean its not for services/ remuneration

##### Fries Strike Pay

F

* Received strike pay – but was assessed as income

A

* **@ FCA –** 
  + Tp – return of capital – return of the person’s own income
    - Ie paid union dues – now taking some back
    - prob－return of capital already paid tax, these money never taxed
  + Court –
    - Union dues paid – lost identity when paid into the common fund
      * No right of withdrawal
      * Disposition – solely determined by exec
    - If the funding is – after-tax dollar
      * Looks like income – replacement of it
        + Reason – periodic payment, related to employment
* **SCC -** 
  + Not sure – so benefit of doubt goes to TP

##### Cirella Damages for Personal Injury = capital

F Received damages for car accident – include special damages n general damages for loss of future income

A

* **Special damages – income from source?**
* Govt – surrogatum principle
  + If have right to an amt n gets compensation –
    - Compensation – is taxable as it surrogate of the income
* Court – **not taxable, of capital nature**
  + Surrogatum principle – applies to business context
  + Loss of capacity – character of capital

##### Curran Inducement pmt – irrelevant who paid

F Tp induced to resign from current work n work for another company –money paid by the person directly

A

* **Inducement pmt-** even if not paid by employer directly?
* Tp – capital receipt compensating for what would have got if hadn’t resign
* **Court – payment for service –** 
  + Considered inducement
    - True nature – depends on agreement n all circumstances

###### Payments on Termination

##### Mendes-Roux In respect of loss of employment

F Wrongfully dismissed 🡪 compensation – in lieu of salary / overtime

A

* Actual loss of office/ employment? Yes
* Interpretation of “in respect of” – broadest possible scope
* Case at bar
  + Amt that’s employment – related – taxable

##### Schwartz v Canada Loss of employment

F TP – arranged to quit partnership n work for Dynacare with salary + stock option

* Tp – given notice but Dynacare informed tp that service is no longer needed
  + Worked for another firm
  + Negotiated settlement with Dynacare

A

* **Retiring allowance - Was there a loss of employment?**
* Minister – settlement pmt – taxable as
  + A – retiring allowance
  + B – income from non-enumerated sources – source is the employment K
* **Court – No loss of employment**
  + Reason –
    - 1. Wasn’t in service – so can’t lose it
      * not yet under obligation to provide personal service to Dynacare
      * Not in service of Dynacare – not retiring allowance
    - 2. Enacted a specific provision on taxability of retiring allowance
      * Did not include these kind of pmt – not taxable
      * Reason – in another provision, use “intended office/ employment”
        + Show parliament considered it but did not include it on purpose
* **Unspecified sources of income**
* **Court – can be unspecified sources under 3(a)**
  + In reality – court reluctant to accept new sources
    - Reason – unfair to tp since don’t know what will be taxed
  + Case at bar
    - not income from a source – since specific rule govern general rule
    - specific rule – retiring allowance
      * s 248(1)- only in respect of loss of employment / office

###### General Benefit

##### Lowe Characterization of Benefit

F

* Tp – acct exec for insurance company
  + Company – incentive program for insurance brokers - can win trip to New Orleans
    - Paid for trip to send tp n wife to accompany the brokers to such trip
* Evidence show
  + Cannot refuse to go on the trip
  + Wife been there – part of the trip
  + On all tours – have to accompany the brokers n require to make connections
  + Don’t have much time to themselves

A Case at bar – Primary purpose – business – personal pleasure is incidental

##### Huffman no material advantage

F Police – clothing allowance for plain clothes officer

A Not benefit – only restore to original econ situation

Reason – required to buy oversized clothing to accommodate equipment n became worn n stain from work

##### Cutmore b4 lowe –even if required, taxable

F Employer paid for employees to have income tax return prep by professional acct- cuz mandatory policy

A Taxable benefit – even if there’s bona fide business purpose

##### Deitch b4 lowe –even if required, taxable

F Employer paid for professional liability insurance – argue its required

A rejected – cuz obtain clear econ adv, irrelevant if its required

##### Savage Connection to Office

F Tp – employer(life ins company) paid $100/course to improve their knowledge in life ins field.

A

* **Connection to office**
  + In respect of – broadest possible scope –
  + Approach
    - Look at subject matter – course is related to her employment
    - Only gift – if sufficiently removed

##### Mindszenthy Gift – difficult to meet

F Tp does presentation using a fake rolex watch. Employer gives him a real one n deducted from business expense

A Taxable –

##### Detcheon

F Schoolteacher at bishop school – also sent children there for no cost

A

* **Benefit?**
* Tp – benefit for employer cuz its mandatory, kids have to act as role models
* Court – no its benefit
* **Value**
* Possibilities
  + Marginal cost -cost to put another student in classroom
  + Market value – tuition
  + Average cost – cost of educating everybody divided by # of students
  + Cost of sending to public school
* Tp – marginal cost = none
  + Since school never reached capacity
* Court - average cost
  + Reason - take fairness into account

###### Scholarship

##### DiMaria

F

* Tp – employer of Dow chemical – paid $3k to tp’s son to attain university
  + To recog his academic achievement

A

* **Benefit** 
  + Tp – not receiving benefit himself 6(1)(a)
    - Received by children n not paid back
  + Crown – benefit – had obligation to pay for kids education
  + Court – no obligation to pay for education
* **By virtue of employment**
  + tp – had to do all application himself
* **Double taxation** 
  + Tp – award would be taxed for son then again under tp
  + Crown – no cuz it’s not scholarship
  + Court – 56(1)(n)
    - Don’t even need to go there – carved out amts received in course of business

###### Specific Benefits

##### Thomas Eligible Housing Loss

F

* Tp – move from Ottawa to St John to work
  + Spent $850k to buy land n build house
  + After a yr – employment terminated – moved back to Ottawa
* Employer – bought the house from tp at cost – which was higher the fair market value - $760k
  + Deal – not contemplated in employment K

A

* **In respect of employment?**
  + Tp – no cuz it’s a separate agreement
  + Court – no, in respect of is very broad n includes this
* **Eligible housing loss?**
* Tp – yes
* Court –
  + **Test –** has relocation enable him to carry on employment / business in Ca?
    - No – did not sell house to enable him to carry on business / be employed in Ottawa
      * Reason – employment was terminated
        + No established employment in Ottawa – could have stayed in St Johns
* Amt – if were eligible housing loss
  + Greater of – cost base/ highest fair market value > lesser of – disposed – proceed / fair market value
    - Cost (850k) – fair market value (760k) = 91 k

##### McArdle Debt Forgiveness

F

* Employer forgave tp’s loan when quit his job
  + Employer – wrote it off as bad debt cuz know it’ll b difficult to collect from tp

A

* Nexus test met – direct connection btw tp’s employment n forgiveness – taxable
  + Reason – integral part of arrangement which ended tp’s employment

##### Caanda v Hoefele /Krull Reversed by 80.4(1.1)

F Tp – received mortgage interest subsidy paid by employer – cuz required them to move to more expensive housing market

A

* The loan was given – cuz they need another mortgage to buy the house
  + Unrelated to employment
    - Not covered by the more strict test –

##### Tsiapraillis Insurance Benefits

F

* Tp received disability benefit pmt under an employer pay all insurance policy
  + Ins company stopped paying🡪 Sued
  + Parties settled – settlement includes passed benefit n future benefit n cost

A

* **Payable on periodic basis?**
  + Only with pass benefit –
    - Yes payable – under legal obligation to pay on periodic basis
* **Pursuant to plan**
  + Yes – surrogatum principle- paid indirectly cuz of the plan
    - Can have inclusions indirectly –

###### Allowances

##### Macdonald allowance

F Tp received housing subsidy when transferred from Regina to Toronto

A

* Case at bar
  + Purpose – compensate for diff in housing cost, subsidy for living expense
  + Arbitrary amt – yes – don’t need to submit a receipt
  + Discretionary – yes no check on how its used

##### Blackman Exception – travel allowance

F

* Tp worked for shipping company – when moved to diff place were paid specific allowance
  + Required to live there for 200+days

A

* **Not travelling in performance of duty** 
  + Reason – 200+days = sojourning – away temporarily for a length period of time
    - Travel – going around for short time

###### Exemptions

##### Guilbert

F Tp – expected to be at location for short term cuz plan on taking another position

Quit position – cuz realize won’t be offer the other position

A

* **Allowance that’s exempt?**
  + Duty – not temporary cuz worked for 3 yr in the end

#### Deductions

###### Travelling Expense

##### Lucs

F

* Tp – electrician with 3 diff jobs
  + Required to provide own tool but place of storage at work so required to drive
  + Sought to deduct travel expense

A **Travel expense -** No in course of duty-carrying out the duty, narrower test

###### Meals

##### Healy ordinarily report to

F Worked for 3 racing tracks – 2 in Toronto and one in Fort Erie

A

* Meal deductible – even tho worked at 3 location w/ approx. equal time
* Reason – 8(4) – must be read together with 8(1)h)
  + Objective e- allow emp who are away to deduct out-of-pocket expenses
    - 8(4)- prevent abuse not prevent legitimate deduction

###### Moving Expense

##### Storrow Pre-amendment – shorter list deduction allowed

F After moving – sought to deduct – diff btw cost n new home, mortgage int, land registry fee, installation cost of dishwasher n new door locks

A Moving expense – cost to ship your stuff only! Other things – unrelated

##### Giannakolpoulos Distance Requirement

F Employed by same employer but required to move – use odometer n calc moved 44km closer

A

* **Distance requirement**
* CRA – draw a straightline on the map , distance was 36km not 44
* Court – test = shortest normal route used by public
  + Reason – tp travel using ordinary ways of public travel
    - Interpret in light of the purpose

##### Dierckens purpose of move

F Tp – drove schoolbus, after 10 yrs decide to move closer to work location

A

* Allow her to work to be employed at new location?
  + 1. Distance – yes 46km closer
  + 2. Purpose of move – enable her to be employed?
    - CRA - no, has been doing it for 10 yrs, n was able to work b4
    - Court –Yes, broad language, no time requirement
      * Intention of amendment – broaden the scope to deal w/ case where u move then later found a job

##### Rennie Ordinarily resides

F

* Tp – start of fat Montreal 🡪 Edmonton🡪 Victoria
  + 83-84 –lived in Victoria,
  + Claimed moving expense from Montreal🡪 Edmonton, Edmonton to Victoria – not lots of $
  + 84 - bought house in Vic, sold house in Montreal – lots $$
    - Claim- selling cost n the cost of buying house in Victoria, n moving furniture
      * Claim –Montreal was original residence

A Case at bar – ordinarily reside in Victoria when claimed deduction

##### Ringham Ordinarily resides

F Tp – accepted job in Budapest, sold home in Kanata n rented a condo – but frequently stayed at hotel

Budapest project abandoned – move to Richmond Hill to work full time

A Only one move – from Kanata to Richmond Hill. Rented condo= way station – ok to deduct

# Income/Loss from Business/ Property

## Characterization

* 9(1) – income is profit from business/ property
* 9(2)- loss
* 9(3) –income from property does not include any capital gain /capital loss

### Definitions - 248(1)

* **Business -** Includes- profession, calling, trade, manufacturer/ undertaking of any kind whatever
* **Ordinary definition of business**
  + Objective factor – Morden
    - Organized activity – diff btw how ppl actually in the business vs tp
      * if hobby for profit – then income from business cuz org act MacEachern
        + treasure-seeking – had agreements btw parties n intend to sell for profit

also ok to deduct loss - if org act Tobias

* + - * if not in original business – may not be taxable
        + Cameron – fisher for salmon n herring

Joined other fisher n caught killer whales twice

not taxed – cuz not business in usual sense

Reason – two occasions were fortuitous

*“But if caught 3 times – may fall into diff category “*

May argue – adventure of trade/ capital income

* + - * Even if org activitiy – if no way to make money – not taxable
        + LeBlanc – org way of buying lottery, hired ppl🡪 made profit

No taxable – compulsive gambler

* + Subjective factor – for livelihood/ profit
    - fun/ hobby / leisure ? not business
* Includes - **Adventure/ concern in nature of trade**  Taylor
  + Consider
  + manner of dealing-
    - compare to traders in the industry
      * even if done once – if do it the way trader does 🡪 trade
  + nature and quantity of subject matter
    - quantity – if lots🡪 likely trader
    - nature – potential use of property
      * if can’t use it 🡪 likely trade
  + intention of tp in dealing w/ property
    - includes secondary intention, but-for test Regal Heights
      * but-for – would u have the property but for the resell of profit
      * tp – bought large parcel of land, primary intention – build shopping centre
        + secondary intention – sell it so adventure in nature of trade
  + factors that are irrelevant
    - singles/ isolation of transaction
    - lack of organization
    - total diff in nature – btw transaction n tp’s other acts
    - lack of subjective intention
* Reasonable Expectation of Profit (REOP**)** only use when there’s a personal element Stewart
  + Consider commercial / personal
    - 1. Commercial – no REOP test
    - 2. Personal – REOP test to determine whether its business/ hobby
  + Approach –
    - Not conclusive – only 1 factor assisting in determining whether tp is carrying on act in commercial manner
* **Exclude office/ employment**
* **Property –** any kind whatever
  + Includes
    - A - Right of any kind, share, chose in action
    - B- Money – unless contrary intention
    - C - Timber resources
    - D - Work in progress of business that’s profession
* Business vs property
  + Business – mixed capital n labour 🡪 active
  + Property – passive – ex. rental, dividends, IP royalties

## Inclusions

### Gains from Illegal Activities

* Business income from illegal acts – taxable
  + Reason – fairness to all taxpayers
    - Issue – not means taken by tp to earn income
      * But whether – its liable to taxation under ITA

### Damages and Other Compensation

* **Damages**
* Applies **surrogatum principle** London Thames 
  + 1. Received pursuant to a legal right
  + 2. Amt in respect of which damages are received – would have been included as income
    - Business income includes:
      * Compensation for lost of profit Manley
      * Compensation for tm infringement n passing off Donald Hart
        + Loss of profit compensation – not capital
    - Capital if HA Roberts
      * 1. Loss of separate business – loss the source of income
      * 2. Loss of enduring K that are of capital nature
        + So important to business – not js regular K
        + If terminated K – business is gone Pe Ben

If only one of several k – business not gone🡪 Profit CNR

* + - Punitive damage = not taxable
      * Even if received pursuant to legal right Bellingham
    - If compensation for diff ch – can be apportioned
      * Compensation for – acct of capital n lost income MV Donna Rae

### Voluntary Payments

* **Not taxable if gift/windfall**
  + Characteristic Federal Farm
    - Not pursuant to legal right
    - Did not result directly / indirectly from any business operation
    - no expectation of receiving it
    - unlikely to occur again
  + problematic cases
  + Cranswick – minority SH received money for $3.35/share to avoid litigation with them
    - Court – not taxable cuz:
      * No enforceable claim, no org effort, not expected by tp – unlikely to occur again
    - Prof – argue – should be capital receipt
  + Frank Beban Logging- business was terminated cuz govt turning land into park
    - Supposed to receive govt compensation – but was not on statutory compensation list
    - Went to diff media n govt paid him the compensation
    - Court – not compensation for termination of business
      * Reason – not under statutory power
  + Ok cases
  + Mohawk oil – received compensation in settlement for negligent construction against Phillips
    - Court- taxable, cuz surrogatum principle
      * It’s compensation for loss of profit n capital
* **Service cases**
* Campbell – swimmer had k with newspaper to attempt to swim across lake
  + If successful – received 5k, was paid even when she failed
  + Court – taxable as income from business
    - Reason – K – secured service o Campbell as professional swimmer
      * Altho no legal obligation – but true nature of transaction was performance of service rendered
* **non-competition payments – windfall**
  + unexpected Fortino
    - tp – sold part of grocery n agree not to compete
  + right to compete is not property Manrell

### Prizes and Awards

* **approach**
* **1. In Business/ employment?** 
  + Yes – fully taxable
  + No🡪 Q 2
* **2. Achievement in field ordinarily carried on?**
  + Yes – 56(1)(n)
    - Prescribed?
      * No – taxable above $500
      * Yes – not taxable
* 56(1)(n) – **Tax if:** For achievement in field of endeavour ordinarily carried on by tp
  + Subject to $500 exemption 56(3)
  + Prize for achievement
    - No requirement of competition – principle of associated words Savage
  + Field ordinarily carried on
    - Interpreted in its ordinary meaning – specific field continuously engaged by that person
      * Turcotte – not taxable
        + Worked at cinema then unemployed – won $$ n game show cuz ans question related to cinema
        + Not related to field ordinarily carried on – went too far
  + Excludes – prescribed prize Reg 7700
    - Recognized by public
      * If publicized / advertised – ok Foulds
      * Consider – evaluation / appreciation LaBelle
        + CRA – must explain why its not well recog
    - Awarded for meritorious achievement in: art/sc/service to public
      * OK - Even if it’s in field of endeavour carried on Foulds
    - Excludes- amt that can reasonably be regarded as compensation for services
* **Cases**
* **prizes from lucky draw – not taxable**
  + if there’s element of chance Abraham
    - ie. Not everyone can win it
  + if not conferred on tp in his capacity as employee/ shareholder – ok Poirier
    - even if need to meet certain conditions to participate in draw
    - tp – met sales quota n participated n won lucky draw
* **prizes in competition –** may be taxable as business income
  + rother – not taxable when outside of business
    - won prize in competition for design w/ National Gallery of Ca/ Govt of ca
    - not taxable cuz – not working for them – sth outside his regular business
  + Watts – taxable when had separate K relationship when entered into the competition

### Income from Property

* 9(1) – rent
* 12(1)(g) – royalties
* 12(1)(j,k) – dividends
* 12(1)(c) **interest income**
* **Requirement** 
  + Received / receivable
    - Received – got the cash pmt
    - Receivable – legal right to receive it
  + On acct of , in lieu of pmt, in satisfaction of
    - In lieu of –
      * Hall – part of bond coupon sold – is in lieu of pmt of int
      * Greenington – if owed int, so other party reduce it from purchase price
        + Still in lieu of
  + Interest
    - 1. Compensation for use / retention of principal sum
    - 2. Referable to principal sum - % of principal sum
      * Can be calculated retroactively – so ok if sum does not exist yet Perini
        + Miller – retroactive salary increase w/ int payable

Court – taxable cuz were referrable to principal sum

Even tho was not determined prior to commencement of time period

* + - * Compensatory scheme
        + If nth was owned – cannot retroactively calc int

Huston – no right to the amt on which int is calculated

Bellingham- punitive damage – amt on it not int

Ahmad – no principal amt until judgement 🡪 no int

* + - * + If amt determined by k - int

Coughlan – pmt for int on liquidated amt wrongfully w/held

* + - * Jurisprudence – must develop alongside n take into acct innovative financing scheme for new business ventures
        + If there’s obligation to pay – when there’s principal bal outstanding – ok Sherway
    - 3. Day to day accrual
      * Entitlement to int grow over time
      * Accrues day to day – if paid in compensation for use of money over stipulated period Sherway
* 16(1)(a)- **deemed int where pmts of int and capital are combined** 
  + If reasonable to regard – as part int n part capital
    - irrespective of k / arrangement – deemed int
  + Consider Groulx, Vanwest
    - Course of negotiation
    - Relationship btw price paid n fair market value
      * If >fair market value, additional cost – presumed to be int
    - Common practise
    - Terms of agreement
      * If given discount when pay earlier n int when pay late – that’s int
  + If no evidence existed proving these factors – not interest Vanwest

## Deductions

* **test**
* 1. Authorization- ordinary business practise test – objective
  + 9(1)- concept of net profits
    - Deduction consistent with “ordinary principles of commercial trading/ well accepted business practise”
* 2. Limitations
  + 18(1)(a) – **income producing purpose test** 
    - Limitation on deduction
      * Can only deduct – if its incurred for purpose of producing income
    - 65302 – rejected avoidability and public policy test
    - CIBC – rejected the egregious n repulsive from 65302
      * Interpret to mean – its so serious as in it wont be part of the business
        + Not public policy test – require parliament to legislate to use it
  + 18(1)(h) – **no deduction for personal / living expenses** except travel expenses
  + 67 – reasonable limit
    - General reasonableness limitation on deduction of expenses
    - If spend so much on expense while making so little on profit – may be unreasonable Cippolone
    - If there’s objective evidence showing the expense is excessive – not deductible
    - Ammar – disallowed deduction for rental
      * Reason – could have negotiated for ½ the rate, more expensive then hotel

### Illegal Expenses

* Generally deductible - Espie Printing
  + Concern with whether they were for purpose of gaining income
  + Irrelevant whether pmt was illegal / not
* 67.5(1)- prohibit deduction for bribes

### Damage Payments

* Deductible if: Imperial Oil
  + 1. an ordinary well accepted expense –
  + 2. Part of business- ordinary n normal so incidental to carrying on the business
* Not deductible if:
  + Too remote –
    - Davis – pig farmer – driving to see pig from brother’s place
      * Seek to deduct damages paid from car accident on the way
      * Court – not part of business
    - Libel cases
      * Fairrier – sugar broker – paid damages for libel against another govt official
        + Not deductible – remotely connected
      * Herald – libel for newspaper publisher – deductible

### Fines and Penalties

* 67.6 – no deduction of fine / penalty
  + Imposed under a law of a country / political subdivision
  + Reversed 65302 – which allowed deduction

### Legal Defence Costs

* Allowed
  + if legal proceedings relate to manner which tp carries on business Rolland
    - Consider whether incurred for purpose of gaining / producing income from business
      * Not considering whether trade practise are legal / illegal
        + Ie – defend cuz intend to carry on the business

Defend business w/in context of business Neeb

* disallowed if –
  + personal to tp
    - Neeb –drug dealer seek to deduct legal cost for defending against drug trafficking
      * Court – defending yourself from going to jail, not to carry on the business
  + unrelated to manner in which business carried on
    - tax evasion cases
      * cormier – not normal business activity carried out in course of business operation
      * Summers – not deductible cuz the decision to declare / not is personal one
        + Not business one
      * Thiele Drywall – if not ordinary / unavoidable then not deductible

### Expenses with Personal Element

* **Personal expense**
* 18(1)(h) – prohibited deduction of personal / living expense
  + **Consider** –
    - 1. Well accepted business practise? 9(1)
    - 2. Income purpose? 18(1)(a)
* **Recreation, Meal, and Entertainment Expenses**
* 18(1)(l) **–**use of recreational facilities and club dues
  + I – non-deductibility of cost for use / maintenance of
    - Yacht/camp/lodge/golf course/ facility
      * does not need to be exclusive Sie-Mac
      * Incidental expense – also non-deductible Sie-Mac
    - Except –
      * made in ordinary course of tp’s business
        + Ie – in business of golf course
    - yacht
      * must be considered – in its ordinary use
      * Barnard – using yacht to take photos, not use of yacht w/ in provision
        + deductible
  + Ii – non-deductibility of membership fees in club
    - Which main purpose was to – provide dining, recreation/ sporting facilities to its member
* **Parties –** cost to entertain business guest @ personal property
  + not deductible
    - adaskin – party after radio show
      * not deductible – cuz radio show already done
    - roebuck – invite client for party – seek to deduct exp for entertainment for business client
      * court – not incurred for producing income nor general business practise
    - Fingold – company pays for the party – fully taxable
  + unless – specifically identified as business guests
    - Grunbaum – business guest invited by company, special invitation sent thru company n id company name
      * Deductible
* **67.1 – meals and entertainment** 
  + For – human consumption of food / beverage/ enjoyment of entertainment
  + Only get to deduct 50% - of lesser
    - A – amt actually paid or payable and
    - B – reasonable
  + Even if tp does not get to personally enjoy/ consume them Stapely
    - Can still only deduct 50%
      * Unless its contemplated in the exceptions
  + Exceptions - 67.1(2)
    - A – actually in the business of providing food/ entertainment
    - B – fundraising event 🡪 for registered charity
    - C – expense for which tp is specifically compensated
      * Ie. Paid for client’s lunch n bill them – identified in writing
    - D – exempt under 6(6)(a) –
      * Ex. require to include as employment benefit/ meal allowance
    - F – allow to have 6 office parties –
      * open to all employees
      * at particular place of business
    - can deduct if food =fuel
      * Scott – tp bike courier, sought to deduct additional food n beverage he eats
        + Court – ok – its necessary fuel
* **18(12) – home office expense** 
  + a – can deduct if
    - I – principal place of business Or
    - Ii – use exclusively for earning income
      * And used regularly n continuously for meeting clients
        + Includes phone contact – don’t need to physically see them Vanka
  + B - Cannot be use to generate loss
    - Cannot deduct amt that > incomes
  + C – can carry fwd the disallowed exp to be deducted in later years
  + General rule
    - If detached sufficiently – ok to deduct
      * Logan –separate phone, frequently meet other drs, use office for purpose of report writing, separated from the house
    - Connected, share utilities – hard to deduct
      * Mallouh – used portion of basement
        + No separate phone, didn’t treat/ receive pt
      * Ellis – garage for pottery business – was connected
      * Maitland – B&B, lived there so not deductible
        + Later distinguished – cuz only seasonal, so had house to themselves
      * **Ok to deduct**
      * Sudbrack – allow to deduct country inn even tho lived in there
        + In a separate aparptment w/in inn – ok
      * Broderick – B&B ok to deduct cuz not seasonal
* **Clothing Expenses**
  + Deductible only
    - for specialized clothing / customs suitable only for work Giroux
      * Not personal use
  + If can wear it regularly – personal not deductible No 360
* **Travel Expenses**
* 18(1)(h) – if travelled in course of business – deductible
  + **Has to travel from “base of operation”**
    - Home can be base of operation Cumming
    - If have a separate office +work location – home cannot be base of operation Henry
    - Once you have base of operation – other things are travel Cork
      * Tp – has right to operate wherever n whenever away from base of operation
        + Element of choice – irrelevant to affect deducibility Forestell
  + Deductible when
    - In course of single business
      * Randall –if its one base of a single business carried out in various geographic location
      * Wasserman – its considered travelling btw diff branches of same business
    - Not when one business to another
  + If involve both business and pleasure – portion may be non-deductible
    - A-1 Steel – if only part of trip was devoted to business – only that part deductible

### Interest Expense

* 20(1)(c) – **paid pursuant to a legal obligation to pay int on**
  + I – income earning purpose test
    - Have to use $$ to earn taxable income
  + Ii- amt payable for property acquired for purpose of gaining income
    - Ex. bought sth n have int on unpaid balance – ok to deduct
  + OR reasonable amt
* **Requirement**  Shell Canada
* 1. Amt must be paid/ payable in the year
* 2. Paid pursuant to legal obligation for int
* 3. Used for purpose of earning non-exempt income
  + Purpose – can be ancillary, does not need to be bona fide Ludco
    - Even if primary is to obtain capital gain/ avoid tax –
      * If ancillary purpose is to earn income – enough
    - Transactions in btw – such as exchanging to diff currency does not alter the basic ch of borrowed funds
      * If used for purpose of producing income – ok Shell
    - As long as it has ancillary purpose of earning income – deductible Ludco
  + Approach - look at the transaction, not the series but GAAR might come in
    - Looks at the transaction independently – focus on direct use Singleton
      * Don’t search for econ realities
    - Prob – GAAR might apply
  + Income – gross income / revenue
    - Not net income / profit
  + Usage
    - Direct use–ok Bronfman Trust
    - Indirect use depends - where the borrowed fund is?
      * personal use – not deductible Attaie
      * bona fide purpose of earning income – indirect use may be ok
        + Grenier – original fund loaned from house, even if refinanced ok
        + Ca Helicopters- primary purpose enable parent comp to buy competitor n 2nd purpose - earn income from business – by charging management fees n amalgamation

Ok – used for an eligible indirect use

* 4. Amt must be reasonable
* **Consider**
  + Emphasis on economic substance – **rejected**
    - Case focused on econ substance – deduction refused – **rejected by SCC**
      * Bronfman trust- was to pay to trustee
      * Mark resources – look at the actual purpose which is to import the loss
      * Robitalle –took $ out of partnership n bought home then use home to loan $
        + Contribute back to law firm🡪 ultimate purpose is purchase home
* 20(3)- **deem to be same purpose**
  + Borrowed money used to repay a loan –
    - Deemed to be used for same purpose as original borrowed funds
  + Ok to deduct
    - Even if use house as mortgage / refinance Grenier
      * As long as the fund is in the business –
      * Concern with the use – not the source
    - As long as directly n fully traceable to the loan 🡪 can deduct int Tennant

## Timings

### General Rules

* **General accounting method**
  + 1. Cash – include when received, deduct when paid
  + 2. Accrual –
    - Include when receivable – legal entitlement but have not received cash yet
    - Deduct when payable
* **Computation of profit** 9(1)
  + **Rule – true picture of income** 
    - Matching of revenue and expense – guideline, not rule of law
      * Ikea- received lump sum inducement for rental
        + Seek to deduct over period of lease – ie match to expense
        + Court – no true pic is report it all right now

Truer pic – cuz got money in ur hands n can use it

* + - Accounting method **–** not require to use the same method West Kootenay
      * Use the one that reveals the true pic
      * Reason
        + 1. Financial n tax acct – for diff purpose

Financial – financial health of company to SH– conservative

Tax – not conservatism

* + - * + 2. Diff company rely on diff acct method – may be unfair

Ie – public trading will require auditing

* + - Determination of profit – look at the express provision, judicial interpretation Candarel
      * Then Interpretive aids – no more
      * GAAP – non-legal tools so external to legal determination of profit
        + May form the basis of determination – but depends on the facts

Reason – “well-accepted business principles” - codified

* + - * + Subordinate position relative the legal rules – if diff law prevails
* **Inclusion rule**
  + 18(1)(b) **– amt receivable** 
    - Even if not due – include it –unless acct method doesn’t require it
    - Earlier of:
      * I – day service rendered and
      * Ii - day service would have been rendered – had there not been undue delay
    - Receivable –tp is legally entitled if sufficiently ascertainable- Irrelevant if its owed right now
      * Sufficient ascertainable – estimates are ok West kootenay
      * Include only when have the legal right
        + Colford – certain % of pmt is held back until work was certified

Ont law – no legal right to the holdback until certification

Court – if not certified 🡪 not receivable

If certified – receivable even if tp had not received/ knew its certified

* **Deduction Rules**
  + 18(1)(a) – amt payable
    - Payable when tp is legally obliged to make a payment Guay Ltee
  + 18(1)(e) – prohibits deduction for contingent liabilities
    - No amt payable yet – cannot deduct
      * Ex. obligation to reclaim mind when its finished –
        + If not finished – no obligation to pay🡪 can’t deduct
* **Require to defer deduction** 
  + 18(1)(b) – disallow deduction in respect of outlay, loss/ replacement of capital
    - Pmt on acct of capital/allowance in respect of depreciation, obsolescence/ depletion
      * Need to spread it over time
  + 18(9)- prepaid expense
    - If can reasonably relate to amt you’ll get this yr – can deduct
    - If not – has to deduct in yr where it can relate

### Inventory

* **General approach**
  + **Homogenous inventory**
    - Deduct everything – add back cost of inventory that you haven’t sold
* **Inventory valuation** 
  + 10(1) – lower of cost/ mkt
    - Allows deduction for accrued loss in value of unsold inventory
      * Allow it to be written down to its fair market value if lower than cost
    - Excludes adventure in nature of trade
  + 10(1.01)- inventory valued at cost – for adventure in nature of trade
    - lower of cost / mkt value – doesn’t apply
    - Reverse Friesen – in adventure of trade
      * Bought land expecting to sell at profit
      * Value dropped n seek to deduct
      * Relied on earlier 10(1)- deduct unrealized cost cuz property=inventory n dropped
  + Possible approaches
    - FIFO, LIFO, average cost – for valuing cost of unsold inventory
      * FIFO -1st in 1st out , dispose inventory in order it was acquired/produced
      * LIFO – last in first out
      * Average cost – avg all cost of inventory – so same cost for all inventory
    - Rejects LIFO – unless reflects actual physical flow of inventory Anaconda
      * Tp – manufacturing metals, metal prices were increasing
        + adopted LIFO – so able to deduct more cost n reduce its income
        + Court – need true pic
  + 10(2.1) **-** Valuation has to be the same
    - Unless with concurrent of minister
    - Response to Cyprus Anvil – p changed inventory method after tax holiday expired
      * Court – can’t change like that – need to reveal true pic
* **Inventory cost –** not deductible until inventory sold Neonex
  + Approach – true pic principle
  + Calculation
    - Cost of inventory sold = value of inventory at beginning of yr+cost of inv acquired-value of inventory at end
* **Definition**  248(1)
  + Description of property the cost/ value – relevant in computing tp’s income from business
    - Either becus:
      * Cost/ value – deduct in computing tp’s gross profit like in Neonex OR
      * Cuz cost /value of homogenous inventory – added back in computing tp’s gross profit

### Running Expenses

* **definition –** expense of running the business
  + General business expense – can’t link it to anything
  + Ex. advertising – unknown if it will bring income
* **Currently deductible**
* If can’t be easily matched with subsequent revenues Oxford Shopping
  + May be reversed by 18(9) – may be able to argue pmt is for tax if paid tax after
* Produce benefits in current period and future periods
  + includes
    - Cummings-lease pickup pmt – induce ppl to move over by picking up their lease pmt
    - tenant inducement payments
      * Canderel - – paid lump sum for tenants to sign lease here
        + there’s whole bunch of benefits – hard to link just to length of lease
        + not related to any income stream

### Prepaid Expenses

* 18(9) – **disallows immediate deduction of** prepaid expenses for
  + A – no deduction if reasonably be regarded as having been made/ incurred for
    - I - Services to be rendered after the yr
    - Ii – on acct of – int/tax/rent/royalties for period after end of yr
    - Iii – consideration for insurance
  + B – deductible when it can reasonably be considered to relate
  + Requirement
    - 1. One of the category of pmt
    - 2. Relate to subsequent period
* Doesn’t apply to tenant inducement payment – cuz parliament didn’t include it Toronto College

### Capital Expenditures

* 18(1)(b) – **no deduction for**
  + 1. Capital outlay loss
  + 2. Outlay, loss, replacement of capital / pmt on acct of capital
    - Property acquired can be:
      * Depreciable capital property- generally tangible
        + Includes – intangible ones like patent
      * Non-depreciable capital property
        + Ex. land, shares
        + No deduction – capital gain /loss – only ½ deductible when disposed
      * Eligible capital property – gd will of business
      * Interest – 20(1)(c)
  + 3. Allowance in respect of depreciation, obsolescence/depletion
    - Depreciable capital property🡪 capital expense
      * 20(1)(a) – capital allowance rule
    - Obsolescence – property is not working anymore
      * When dispose worthless property – can get deduction
        + 20(16)- terminal loss
      * Depletion – resources
* **Deduction approach** 
  + Generally deducted over period of time – to reflect the true pic
* **Characterization - two tests** Johns-Manville
  + **1. Expense incurred once and for all**  British Insulated and Helsby Cables
    - View – bringing into existence an asset / adv for enduring benefit of trade
    - Capital expense
      * Expended to acquire means of production
      * Not once and for all – AND
        + With a view to bring into existence an asset for enduring benefit of trade
    - Currently deducible –
      * Use the means of production
  + **2. expended on est the structure w/in which profits are earned / in process of earning income** B.P. Australia, Sun Newspapers, Hallstrom’s
    - Capital expense – expended to acquire means of production
      * Acquisition of means of production
      * Spend on structure
    - Currently deductible – part of money earning process
* **Separate asset?**
* approach – Canada Steamship
  + proportion of amt of the whole value
    - if large amt of whole value – separate
      * Thomson Construction – 6k/27k – large amt
        + Separate asset🡪 capital exp
      * Even if separate parts – if large proportion – capital
        + Donohue Normick-separate parts but large portion relative to whole value, will last for 10 yrs n not intended to be used for resale
  + amt compare to ordinary repair
    - if large – separate
    - Van Tugboat – usual repair is 15k, this cost 42k – capital
* consider
  + assets that are part of larger assets – capital expense
    - consider separate asset – ex. engine Canada Steamship
* **Acquisition n maintenance / repair of tangible property** 
  + Repair – deductible
    - Include
      * Canaport - to prevent prob n extend life expectancy
      * **Goldbar** – if only trying to repair the problem, use of current tech is ok
        + Court – focus on the purpose of action

If view to bring in enduring benefit – capital exp

Repair – currently deductible expense

* + - Exclude –
      * replacement that’s so diff in kind
      * replacement – that’s of enduring nature Canadian Reynolds
    - Consideration –
      * If replacing w/ new technology – ok to deduct
        + But if significant improvement – not deductible
  + Improvement/ upgrade – capital expense
    - Capital expense - If replace a substantial part w/ sth essentially diff in kind Shabro

### Capital Cost Allowances

* **Different ways of depreciation** 
  + 1. Straight line- deduct same amt until goes to zero
  + 2. Declining balance – deduct certain %
    - Reason – many asset depreciate much quickly in the beginning
* **Definition**
* **Capital cost of asset CCA–** 20(1)(a)
  + The money deducted
  + Rates- Regulation 1100(1)
* **Undepreciated capital cost UCC –** 13(21)
  + UCC = A-E –F +B
    - A – capital cost of asset
    - E – capital cost allowance 20(1)(a)
      * Total depreciation – as defined in 13(21)
        + Include terminal loss 20(16)

Occurs when no property remain in class –

n deducted less than actual depreciation

able to deduct when calculating UCC

* + - F – subtract lesser of
      * proceed of disposition Or
      * capital cost
    - B – sum of all recaptured depreciation taken
      * If UCC = negative
        + Tp – claimed more deduction then its actual decrease in value
      * Negative balance - recaptured by including in computation of income
      * 13(1)-
  + Calculations
    - 1 asset in class
      * Year 1 – UCC = Cost – CCA
      * Year 2 – if disposed
        + UCC = last yr UCC – proceed

If UCC = negative – taxed back the negative (recapture depreciation)

If UCC = positive – terminal loss, can deduct

Proceed > cost –

=last yr UCC –capital cost

Tax ½ on gain =Proceed-cost

* + - Acquisition of depreciable property - + to UCC
    - Recapture depreciation – inclusion in income 13(1)
      * when UCC=(-)ve
    - terminal loss- deduct from income 20(16)
      * UCC = (+)ve
* **Depreciable property –** 13(21)
  + Requirement
    - Income producing
  + Included in Regulation 1100
    - Classes of property – Schedule II
  + Exclusion – 1102(1) – shall be deemed not to include
    - B – if in inventory
    - C – not acquired for purpose of gaining/ producing income
    - F- can’t deduct one that’s in 18(1)(l)
    - (2)- land
* **Disposition –** 248(1)
* **Proceed of disposition –** 13(21)
  + A **–** sale of property
  + B – compensation for property unlawfully taken
  + C – compensation from ins
* **Approach to CCA**
* **1. Depreciable property?**
  + Income producing?
    - Look to purpose of acquiring property
      * If acquired and demolished right away – other purpose Ben’s LTD
        + Note – if the rental was longer – may be able to argue its income producing
      * If originally plan to acquire property to produce income
        + Plan failed so tear down – ok
      * As long as purpose was to make income – no requirement that have to hold it for specific amt of time Hickman motors
        + Tp – held property for 5 days then sold it

Earned rental income during the time – ok to deduct

* + Not part of exclusion?
* **Deduction**
  + 20(1)(a)- allowed CCA deduction
    - 1100(1), Schedule II
  + Prohibition
    - Cannot use CCA to produce net loss for rental properties 1100(11)&(14)
      * only deduct up to net income = 0
* **Class**
  + Sometimes act create separate class for diff property
    - 1101(a)(ac)- rental property – each in its own class
      * With capital cost $50k or more
* Diff between accounting n ITA
  + 1. Method used
    - ITA - usually decline balancing approach
    - Acct – both, tend to use more straight line
  + 2. Pooled
    - ITA – assets are pooled into diff class, deduct form pool of that class
    - Acct – depreciate one by one
  + 3. Depreciation is optional in ITA

###### Characterization

##### Morden Business?

F Originally – own racing stable w/ extensively org gambling activities

* 1948 – dispose of all the horses – only gambles occasionally

A

* case at bar
  + objective – org diff
    - cuz gambler – on avg they loose but bookies – making money
  + subjective – hobby

##### Taylor Adventure of Trade

F Tp – purchased lead when realize there’s adv to make profit n sold it to own company 🡪 profit

A

* case at bar
  + manner of dealing
  + nature n quantity
    - lots lead, can’t do anything w/ the amt of lead

##### Stewart

F Bought condos intended to rent it out – turn out to be worse so took actions to consolidate financially

Sold condos – but chose not to pay down debt when had $$ to do so

Sought to deduct int expense against income – reassessed cuz wasn’t running a business, no REOP

A` Case at bar – commercial cuz not living there – no REOP n deductible

#### Inclusions

###### Gains from Illegal Act

##### No 275 illegal act – taxable

F Tp is prostitute but CRA assessed her income – argue cannot be contemplated to tax illegal acts

A Taxable – reason unfair for ppl who are doing things legally n paying tax

###### Damages

##### Manley

F Tp sued for breach of warranty n awarded damage = expected profit

A Compensation for business income

###### Voluntary Pmt

##### Federal Farms

F Received relief fund for farm destroyed by tornado

A

* **gift?**
* Cra – taxable
  + Took place of growing crops – if compensation for inventory🡪 business income
* Court –gift cuz no legal right
  + If ins- have legal right so entitled to get sth back
* Case at bar – no ins, no legal right

###### Prize and Awards

##### Abraham Lucky Draw – not taxable

F Tp – owned IGA store n entered into draw. Won car – got cash instead

A Prize – not taxable

* + Reason –
    - Not remuneration for services
    - Pure chance – when probability is low enough – breaks chain of connection w/ business

##### Rumack

F Wont set for life lottery –

A

* Taxed on the prize cuz its like income
  + Reason – recurring, stream of pmt
  + Source of income – k obligation w/ lottery association
* tax like capital
  + assume – purchased annuity n get return on amt put in
* **Prof’s view – wrong!!**
  + Annuity – owned by the lottery association – not the tp
  + It’s a prize – artificial to tax

##### Savage

F Worked for Life ins company n completed course so awarded $100/course

A were amendments made to act- now would be taxable

##### Foulds Prescribed Prize

F Tp – won music prize for the band – only use to finance an album of original music

A

* **Not taxable** 
  + Not business income – can’t use it for anything, usage tied
  + Prescribed prize

###### Property from Income – Interest

##### Perini Estate Int – can be retroactively calc

F Tp – sold shares to Columbia record

* 3 elements to sale: 600k cash, share of profits, interest = 7%of vendor’s share of net profit
  + Argue – non are taxable income
    - Interest – altho called int but its part of purchase price🡪 all capital

A Still interest – even if retroactively calculated

##### Groulx Deemed Int

F Tp – had offer to buy his farm – after negotiation – decide payments are paid over time

K – late pmt – pay int on if early w/ pmt – discount

A **Reasonable to regard as int? yes**

* Case at bar
  + K – reversed int
  + Std practise – charge int when pmt deferred

#### Deduction

##### Espie Printing illegal payments

F Tp – made overtime wage pmt in circumstances that may have been illegal

A Deductible -

##### Imperial Oil Damage payments

F Tp - oil company ships oil – ship collided w/ another so paid damages

\*\*note – decided under earlier Act – test was more narrow for purpose of earning income

A Deductibility

* Approach –
  + 1. Decide whether its an ordinary well accepted expense –
    - Yes – incidental part of tp’s business to have accidents
  + 2. Part of business- ordinary n normal so incidental to carrying on the business?
    - Yes – normal n ordinary hazard

##### Rolland Paper Legal cost

F Various company – charged under anti-monopoly provision of Crim code, seek to deduct legal cost

A

* Legal cost – deductible –
  + Consider whether legal fees incurred as incurred for purpose of gaining / producing income from business
  + Not considering whether trade practise are legal / illegal

##### 65302 BC

F # Company – had quota on egg and chicken supply

Were making deliberate decision to produce over-quota – cuz did not want to purchase quota at curret price – caught n fined

A

* **Can the levy be deducted? Yes**
  + Public policy – gone
    - It’s for govt to decide what’s the right public policy –
      * If court🡪 uncertainty
    - Not supported by the act
  + avoidability – gone
    - Prob – from case law, no support from statute
  + But said – if have sth so egregious / repulsive – not deductible
    - \*\*rejected by FCA in CIBC

###### Personal Expense

##### Royal Trust recreation

F Tp – trust company, required employee to join clubs n company paid foro membership

A

* 1. Is it a well-accepted business practise? Yes, other companies doing same thing
* 2. Income purpose – Yes, evidence of actually earning income
* Deductible -\*\*reversed by parliament

##### Stapley food n entertainment

F Realtor who bought gift certificate/ sports ticket n gave them to clients

A

* **Only deduct ½**
  + Even if do not get to personally consume them
  + Reason – not included in exception of the scheme

##### No 360 clothing expense

F Tp – actress claimed to deduct clothes

A No – if can go out n wear regularly – cannot deduct

##### Cippolone s 67 – reasonableness

F Tp – institute of humour – seek to deduct expense

A **Reasonable expense?**

* + Spent so much expense – while making so little on profit – not reasonable
    - Referred back to minister to consider which are reasonable

##### Locke

F Seek to deduct 1/6 of home expense – cuz do work at home

A

* **At the time – no 18(12)(a)**
  + Need indication to public that you are operating business
* Case at bar
  + No sign, unable to est # of clients

##### Cumming Travel for business

F Dr lived ½ mile away from hospital – hospital, no area for tp to carry out admin fcn of practise

Usually travel home to work on admin related n return to hospital to visit pt

A **travelling in course of business?**

* Base of operation – home
  + So commute btw hospital n home not personal living expense

##### Bornfman Trust Int Expense

F Sets up trust for daughter – in discretion of trustee

* Trust – want to make capital distribution to her
  + Decided to borrow money cuz not gd time to sell shares
  + Seek to deduct interest expense

A Disallowed deduction

* 1. Ignore indirect use of money – consider only current n direct use of loan
* 2. Only concern w/ what tp had done – not what could have done

##### Attaie reject indirect use

F Tp – left Iran when still had so money there so had to borrow $$ to buy house first in Ca.

When got the money – deposit the money cuz of high nt rate rather than pay off mortgage

Sough to deduct mortgage int - argue $$ is used for investment indirectly

A No deduction – living in the house so for personal use not for purpose of making income

##### Grenier ok to replace loan if still in business

F TP – In order to purchase dealership borrowed $$ by mortgaging home. - @this pt – int deductible

* Then sold house for 110k – paid off the money to bank
  + mortgage some more money to buy new house –
  + want to deduct int from new house mortgage – argue it had replaced the original loan

A Deduction for the amt of the original loan - reason fund is still in the business

##### Mark Resources

F Ca company with subsidiary –subsidiary bunch of losses accumulated

* borrowed money n put them in subsidiary n distribute dividends back to company
* Seek to deduct int expense – reason purpose of earning income – ie getting dividends

A No deduction – what’s actually done is import loss from US to Canada

##### Ludco Ancillary purpose – ok

F Borrowed money to invest in offshore tax haven –

* declared purpose to pay little in dividends to accumulate untaxed investment returns
  + in turn – accumulated asset increase companies share price🡪 can sell shares at capital gain
* seek to deduct int on money borrowed – 6m but earned only $600k in dividends
* when sold share – capital gain of 9.24m

A Deduction allowed for full $6m – income refers to income subject to tax, not net income

If tp has ancillary purpose to earn income subject to tax – int expense deductible

##### Singleton Look at ancillary purpose

F Took out money from partnership acct to buy house – borrowed money to contribute to acct again

A Deduction allowed – purpose was to refinance his capital acct

#### Timing

##### West Kootenay True Pic – method doesn’t have to be the same

F Energy company with 2 mth billing cycle – at end of yr have electricity delivered but unbilled

* 2 methods of approach –
  + Until 1979 – did not include them
  + Acct advice – include them if delivered n estimate how much it’ll cost
    - Financial acct – accrual
    - Tax- original method

A Case at bar – include unbilled revenue cuz truer pic

##### JL Guay Ltee timing it becomes payable

F Tp – construction business, held back some pmt of sub-k

Want to deduct the hold back claiming they are payable

A Not payable – until work is signed off by architect--> not deductible

###### Inventory

##### Neonex inv cost – not deductible until sold

F In business of making custom made electrical signs – at end of yr has uncompleted signs

* Originally – treated it as work in progress – deduct cost when sold them
* 1970-72 – deduct cost incurred for partially produced sign
  + accelerated deduction🡪 pay less tax this yr

A True pic principle applies – better to reflect deduction of exp when revenue is generated

###### Running Expense

##### Oxford

F Tp – paid 500k to city as inducement to create road to shopping center

Attempt to spread cost over 15yrs on financial statement – but deduct all in tax

A True picture

* running expense –
  + not to spread over 15 yr – cuz cannot be matched up/ linked to particular revenue
    - no idea if it will lead to more income / not

###### Capital Expense

##### Johns-Manville

F Bought more land to avoid risk of landslide – sought to deduct cost of land as ordinary business expense

A Not capital expense

* reason
  + purpose buying – remove a current obstacle in operating mine
    - not acquire a capital asset
  + cost incurred – as integral part of day-to-day operations
  + after mining – land has no intrinsic value – but consumed by mining process
  + land – no enduring value cuz has to constantly buy more land to keep going
  + annual cost of buying land – small relative to cost of operating the mine

##### Canada Steamship

F Had ship – need to repair holes of ship n install new boilers on ship

I Capital / regular exp – acquiring new boiler, fixing the hole

A

* **separate asset** 
  + treatment – if have sth that’s separate in part of a larger asset – treat it as separate capital expense
* case at bar
  + holes – just repairing the ship – not replacing some separate asset
  + engine – replacing a separate asset

###### CCA

##### Ben’s Ltd

F Tp – bakery purchased adjacent land – demolished them once got rezoned

Seek to deduct the demolition – argue its income producing cuz had one tenant

A

* approach – look at whether acquire the building for purpose of income
* case at bar – no
  + demolished the building cuz purpose was to expand
  + rental was short term

# Taxable Capital Gains and Allowable Capital Loss

## Computation

* **1. General rules** – 38-40
  + 3(b) – net taxable capital gains=taxable capital gain – allowable capital loss
    - Allowable capital loss generally deductible only against capital gains
  + 38
    - A– ½ of capital gains taxable
    - B – ½ of capital loss deductible
  + **39** – gains n loss defined as residual
    - B – loss
      * Excludes – disposition of depreciable property
        + 🡪 terminal loss 20(16)
  + 40(1)
    - A – **gain = proceed of disposition** – (adjusted cost base+selling cost)
      * Proceed – sale price
      * Adjusted cost base – generally cost
      * Ii, iii – timing rules
        + Designed to allow tp who have big gain in 1 yr but don’t receive all the gain at the same time to spread it out over time
    - B – **loss = (ACB+selling cost) – proceed of disposition**
* **2. Special rules**
* 40(2)(g)(iii) – personal use property - no deduction
  + Loss deemed to be nil
  + Def’n- includes
    - Property used primarily for personal use/ enjoyment of tp / person related
  + Excludes – listed personal property
    - Can only deduct against gains
* **Deemed disposition -** trigger loss/ gain when haven’t dispose it
  + 45(1)(a) – change in use- use for personal than gain/ produce income or vice versa
    - Deemed tp to have
      * Iii – dispose for proceeds = fair market value
      * Iv – immediately reacquired at cost=fair market value
  + 13(7(a)(b)
* **Non-recognition rule** 
  + 73(1) – transfer of capital property to spouse/ common law partners
    - Won’t tax the transfer
    - Deemed acquired at proceed
      * I – depreciable
        + If only 1 asset = UCC
      * Ii – other case
        + Adjusted cost base
    - Can elect out
* **Definitions**
  + Disposition – 248(1)
    - A – do sth that entitles u to proceed of disposition
  + Adjusted cost base – 54
    - A- depreciable property – capital cost to tp as of that time
    - B - Other case, cost to tp of property adjusted
  + Proceed of disposition – 54
    - A - sale price of property that has been sold
      * Includes various other things

## Characterization

* **Different kinds of property**
* **Capital property** – give rise to capital gain / losses 54
  + Depreciable property
  + Includes personal-use property
* **Inventory** – give rise to business income 248
  + If not capital property / eligible capital property – its inventory Friesen
* **Approach**
* **1. Is it capital property / inventory** 
  + Business income/ adventure of trade – inventory
  + Others – capital
    - Includes personal property
  + Land – could be both
    - Non-depreciable but can be any kinds of use
    - Looks at the manner dealing w/ land

|  |  |  |
| --- | --- | --- |
|  | Business Income – Inventory | Capital Property |
| Holding period | Short | Long |
| Circumstances of sale | Solicited offer w/out crisis | Unsolicited offer / crisis such as threat of expropriation |
| Other activities carried out by tp | Frequently buys n sells land/ in business as developer | rarely buys n sells land |
| Method of financing/ REOP | Primarily bought w/ borrowed funds 🡪 trading intent | More equity 🡪 investing intent |
| Use of property | Not for personal use | Tp’s personal use |
| Secondary intention to profit from resale (Regal Heights) | Yes | No |

* Taylor test - Whether its an adventure of trade? Yes 🡪 inventory
  + Manner of dealing
  + Nature and quantity of subject matter
  + Circumstances responsible for disposition
  + Reasonable expectation of profit
    - If speculative-
  + Secondary intention doctrine – but for
    - Require possibility of resale at a profit – as motivating reason for purchase
    - If intention to carry out business as long-term investment – inventory Racine
* **Property held in adventure in nature of trade= inventory** 
  + Not capital property🡪 cannot be ch as personal use property – Burnet
  + Prob w/ case- seem to suggest its personal use

##### Regal Heights inv/ capital property

F Acquired lands to build shopping centre – but failed so sold off land n made a gain

A

* **Inventory or capital property?**
* Adventure in trade=business income = inventory
  + Reason – adventure – speculative, always depended on chance
    - Nth concrete that it was going to happen
    - Secondary intention – altho had primary intention to build shopping centre
      * If couldn’t realize – could still get gd piece of land🡪 highly speculative

##### Burnett

F Tear down the house n built another one – then sold it at massive loss

Seek to deduct – argue its adventure in nature of trade – so can deduct the loss

A

* **Inventory**
  + Factors suggesting – not inventory
    - Lived in it, children bedroom named after kid
  + Accept how tp started off as adventure in nature of trade- then ran into prob
  + Able to deduct

# Rules Relating to Computation of Income

## Allocation of Proceeds

* 68 – if an amt can reasonably be regarded as being in part consideration for disposition of particular property
  + A- reasonable amt can be deemed proceeds of disposition
  + Idea – if got some global purchase price
    - Reasonable to deem a reasonable amt as proceed –
    - Revenue authority – can allocate proceed in some global purchase
* **Approach to allocation** 
  + General rule – defer to party allocation Golden
    - Factors to consider
      * Consider matter from perspective of purchaser n vendor
      * Hard bargaining
      * Reasonable allocation
        + Doesn’t need to be fair market value – just reasonable requirement
  + Relocation likely if
    - Agreed amt differs substantial from fair market value
      * Peterson – allocated a lot to business gdwill
        + But was non-existent cuz business has been suffering
        + court – allocation unreasonable
    - no hard bargaining over allocation
      * Leonard – tp bought farm n quota, for tax – used FMV rather than k agreement
        + Argue – s 68 – allocation can be deemed
        + Court – allowed – cuz could not have bargained

There’s significant price btw FMV vs reasonable allocation

* + Land and buildings
    - Possible to claim building value = zero if purchaser will demolish it Bens Ltd
    - But if building was used by vendor – Stanley
      * Even if purchaser tear it down – should still have some value
    - If building demolished – then sold land, s 68 doesn’t apply Malloney’s
    - Govt response – 12.21.1 – if dispose land n building at same time
      * Capital gain on land n terminal loss on building – automatically allocates proceed

## Non-Arm’s Length Transfers

* 251(1) – definition of NAL
  + A – related personal shall be deemed not to deal w/ each at arm’s length
    - Include – blood related, common law, adopted 251(6)
      * Includes in-laws
  + C – any other case- question of fact whether its NAL
* 69(1)- applies **except as expressly provided in this act** – can be overridden
  + a- if acquired anything from person dealing at non-arm’s length (NAL) >FMV
    - Deemed to acquire at FMV
  + B – disposed for no proceed / proceed <FMV to NAL
    - Deemed to receive proceeds = FMV
  + Regular transfer- double taxation since no adjustment
    - Court – favour adjustment on both sides of transaction
  + Gift – adjust both sides
    - 69(1)(b)(Ii) – gift – tp deemed to have received =FMV
    - 69(1)(c) – recipient deemed to acquire at cost = fmv
* 73(1) – transfer of capital property to spouse/ common law partners- not taxable
  + A – deemed to have dispose at cost
  + B – acquire at cost

## Attribution Rules

* 74.1(1)- income/ loss from property transferred to spouse/ common-law partner
  + Attributed to transferor – not transferee
* 74.1(2) – income/ loss from property transferred to person under 18 / niece / nephew
  + Deemed to be transferor
* 74.2(1) - Capital gains n loss from property transferred
  + Attributed back to transferor
    - I – net taxable gain of all transfer – if gain> loss- deemed to be capital gain of transferor
    - B- if have loss – loss for transferor
* 74.5(1) – attribution rule does not apply if
  + A – FMV property transferred does not > FMV of property as consideration And
    - Ie paid fair market value
  + C – if property is transferred to / for benefit of spouse
    - Transferor – elects out of rollover rule 73(1)
* 74.5(11) – attribution rule does not apply to transfer
  + If reasonably conclude – one of main reason is to reduce amt
    - But for this section

##### Golden

F tp – agreement to purchase land, building n vehicles

A defer to party allocation

##### Lipson

F Transaction designed to make mortgage int deductible w/out triggering taxable capital gain

* Sold shares to wife – roll over rule in 73(1)
* Reverse attribution of net loss on share from wife to husband

A

* Majority – transaction did not misuse/ abuse int deduction 20(1)(c) / refinancing rule in 20(3)
  + Misuse / abuse of 74.1(1)
* Minority – no misuse
  + Parliament must contemplated that tp would have taken adv of various rule to min tax
* Rothstein J –
  + GAAR – applies as last result
  + 74.5(11) – should apply – the attribution rule should not apply to the transfer!